

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA) 2:19-cr-00350-JD-1
Plaintiff,) 2:19-cr-00350-JD-2
vs.) 2:19-cr-00350-JD-3
) Philadelphia, PA
DONNIE SMITH, ABID)
STEVENS AND MAURICE QUINN) January 31, 2020
Defendant.) 10:12 a.m.-3:54 p.m.

JURY TRIAL - DAY FIVE

BEFORE THE HONORABLE JAN E. DUBOIS,
UNITED STATES DISTRICT JUDGE

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1 P R O C E E D I N G S

2 THE CLERK: All rise.

3 THE COURT: Good morning, everyone.

4 ALL: Good morning, Your Honor.

5 THE COURT: Please be seated. All
6 right. Let's talk about the schedule for today. The
7 Government intends to call its last witness, I think
8 the last witness. The record custodian to cover the
9 911 call and Exhibit 5-B; am I correct?

10 MR. ECKERT: You are, Your Honor.

11 THE COURT: And how long do you
12 anticipate that will take?

13 MR. ECKERT: About ten minutes, Your
14 Honor.

15 THE COURT: All right. Any other
16 witnesses?

17 MR. ECKERT: No, Your Honor.

18 THE COURT: Mr. Patterson?

19 MR. PATTERSON: Your Honor, I conferred
20 with Mr. Smith this morning and he will not be
21 testifying and I'll colloquy him at the appropriate
22 time. No other evidence, no other witnesses on my
23 side.

24 THE COURT: Mr. Wittels?

25 MR. WITTELS: Your Honor, as I've

1 stated before, Mr. Stevens is not testifying. We have
2 no other evidence to present, so we will rest at the
3 conclusion of the Government's case.

4 THE COURT: Thank you. Ms. Meehan?

5 MS. MEEHAN: Thank you, Your Honor.
6 Your Honor, Mr. Quinn and I have spoken and he will
7 not be testifying. I have one short defense witness
8 that I advised the Government of this morning, a non-
9 fact witness.

10 THE COURT: Pardon me?

11 MS. MEEHAN: A non-fact witness.

12 THE COURT: And how long will that
13 take?

14 MS. MEEHAN: Ten minutes.

15 THE COURT: All right. Well, we have
16 an issue regarding the charge. The way the change in
17 the charge was presented yesterday was well, it was
18 certainly not well thought out. And I say that
19 because immediately before the new charge, and it was
20 a dramatic change in the aiding and abetting Count II
21 charge, immediately before that I asked about the
22 schedule and we told the jury that we would start
23 today, no one said anything about a theory.

24 And the bottom line, the jury is here,
25 it's a little after 10. And it sounds like we have at

1 most 30 minutes of testimony. And I'm saying this to
2 educate you with respect to how trials are handled.
3 We could have solved the problem by having the jury
4 come back a little later, say 1 o'clock, maybe 11
5 o'clock or 12 o'clock to give us an opportunity to
6 finish with the charge because we couldn't have
7 finished yesterday, primarily because the Government's
8 theory of the case, when I asked Mr. Eckert about it,
9 was diametrically opposed, in conflict with the so-
10 called agreed upon aiding and abetting charge for
11 Count II. So we're going to have to spend more time
12 on that.

13 And we have the jury in the jury room.
14 That is not good. And I'm telling this with you, I'm
15 sharing this with you, I've tried I don't know how
16 many cases as a judge and before that 30 years as a
17 lawyer and you've really got to think ahead to how the
18 providing of testimony, closings, openings, charge how
19 it all fits together in a way that makes sense and
20 doesn't have people hanging around doing nothing.

21 What I propose doing is hearing the
22 evidence this morning. And then excusing the jury.
23 There are two choices, we can excuse them until Monday
24 or we can excuse them until early afternoon with the
25 thought that we can have closings today.

1 I have to look at the charge. Ms.
2 Meehan's presentation of the so-called new charge last
3 night didn't even give me an opportunity to read it
4 and that isn't going to work.

5 I think I can come up with the way I
6 will charge the jury, given a few more hours. We ran
7 out of time last night, didn't get till oh, I guess a
8 quarter of 9. And the bottom line, my thought is and
9 again there are two alternatives. We can hear --
10 we're going to hear the evidence first and I'll hear
11 any motions that are presented. And we don't have to
12 have the jury for the motion.

13 But the choice is we either excuse the
14 jury until say 1 o'clock, by which time I think I will
15 not have a completed charge, we'll finish it probably
16 tomorrow, maybe this afternoon, but probably if not
17 this afternoon then by tomorrow. Or excuse the jury
18 until Monday.

19 If we -- while I'm talking --

20 MS. MEEHAN: Oh, I'm sorry, I thought
21 you were asking for motions.

22 THE COURT: Asking for what?

23 MS. MEEHAN: If there were motions.

24 THE COURT: I don't think I asked for
25 motions. If we proceed today, I wouldn't do that if

1 we were to decide to do that -- I wouldn't follow
2 through on that unless I was able to give you if not
3 the charge itself, the -- well, the essence of my
4 instructions. And all we're talking about really is
5 the way we handle the aiding and abetting charge with
6 respect to Count II.

7 So the choice is, try to proceed that
8 way, have the jury come back early afternoon and get
9 the closings done today. Charge on Monday. Or
10 whether we excuse the jury until Monday and have the
11 closings and the charge on Monday.

12 That runs the risk, not a risk, but it
13 might lead to the fact that they won't finish
14 deliberating on Monday. And the deliberations will
15 spill over into Tuesday.

16 I don't want you to think this through
17 independently, if you want to talk about it among
18 yourselves. It sounds like -- it seems to me that
19 your interests are basically the same, you might have
20 different views, but your interests are basically the
21 same.

22 So I'll stay on the bench. Why don't
23 the four of you talk about those two alternatives.
24 Jury excused until 1 o'clock with a goal of closings
25 today, charge on Monday or hear the testimony and let

1 the jury go home until Monday.

2 (Pause)

3 MR. ECKERT: We can just talk right
4 here, Your Honor.

5 THE COURT: Absolutely.

6 (Pause - counsel confer)

7 MR. PATTERSON: Your Honor --

8 THE COURT: Who will speak for the
9 group?

10 MR. PATTERSON: I believe the -- on the
11 defense side, we would take option two which would be
12 excuse the jury early, start fresh with the closings
13 and the charge on Monday morning.

14 MR. ECKERT: That's fine with us, Your
15 Honor, thank you.

16 THE COURT: That'll give us a little
17 more flexibility. I don't want you to breathe so much
18 a sigh of relief yet because after the jury is
19 excused, and I'll do that, after the jury is excused I
20 want to go back to the charge because the -- where we
21 are now leaves me without a proposal from you or
22 again, the troublesome instruction is aiding and
23 abetting, Count II.

24 I can still hear and I thought this on
25 the way home, the aiding and abetting charge presented

1 as an agreed upon charge, talks about Quinn as the
2 aider and abettor and Stevens and Smith as the
3 principals. I asked Mr. Eckert whether that was his
4 theory, he said no. And that presents an interesting
5 conflict between my charge and the Government's
6 position.

7 And notwithstanding the fact that this
8 was represented to be an agreed upon charge, it's so
9 internally inconsistent with the case that it can't be
10 given.

11 What I will try to do in the charging
12 conference, this is part three this after -- well,
13 we'll do it this morning is address the issues that
14 the defense says are lacking in the charge and add
15 them. I'm not going to dramatically tinker with the
16 Third Circuit charge. But I'll consider adding to it
17 or removing from it. That's what we'll do.

18 All right. We're ready to proceed with
19 the witnesses?

20 MR. ECKERT: We are, Your Honor.

21 THE COURT: I think what we'll do is
22 we'll have Government witness, Government rest, will
23 not take the time to argue motions after the
24 Government rests, we'll proceed with Ms. Meehan's
25 evidence. And then we'll have motions, I'll hear that

1 first and then we'll move into the charging
2 conference. Ms. Hull.

3 (Pause)

4 THE CLERK: All rise.

5 (Jury in)

6 THE COURT: Good morning, everyone.
7 Please be seated.

8 JURORS: Good morning, Your Honor.

9 THE COURT: Mr. Eckert, are you ready
10 to proceed?

11 MR. ECKERT: We are, Your Honor.

12 THE COURT: You may.

13 MS. MARTIN: The Government calls
14 Michele Cordilas to the stand.

15 THE CLERK: Please raise your right
16 hand.

17 MICHELE CORDILAS, GOVERNMENT'S WITNESS, SWORN

18 THE CLERK: Thank you. Please be
19 seated. Please state your full name and spell your
20 last name for the record.

21 THE WITNESS: Michele, one L, Cordilas,
22 C-O-R-D-I-L-A-S.

23 THE COURT: Good morning.

24 THE WITNESS: Good morning, sir.

25 MS. MARTIN: May I, Your Honor?

1 THE COURT: You may.

2 DIRECT EXAMINATION

3 BY MS. MARTIN:

4 Q. Good morning, Ms. Cordilas.

5 A. Good morning.

6 Q. Ms. Cordilas, can you tell the jury how
7 you're currently employed?

8 A. I'm employed by the Philadelphia Police
9 Department. I'm a 911 dispatcher assigned to the
10 audio reproduction unit.

11 Q. What does that mean, being a 911 dispatcher
12 and what does it mean to be assigned to the
13 reproduction unit?

14 A. When I'm a 911 dispatcher, I can work in the
15 call taking center. I have dispatched, I don't do
16 that anymore. Right now, I listen to 911 tapes, I
17 reproduce them for whoever requests them with the
18 proper paperwork, whether it's detectives, lawyers,
19 what have you.

20 Q. In general, when you say dispatch, what are
21 you talking about?

22 A. Dispatch is when you talk to the officers on
23 the street, the --

24 Q. And --

25 A. Sorry.

1 Q. No, I apologize, please continue.

2 A. And the 911 call takers talk to the people
3 that call 911.

4 Q. You're communicating with the officers that
5 are out on the street?

6 A. That's correct, the dispatch side.

7 Q. And all of those calls recorded?

8 A. That's correct.

9 Q. And do you in some way, shape or form
10 associate those calls with a particular incident?

11 A. That's correct, yes.

12 Q. How do you do that?

13 A. The 911 operator will receive a 911 call
14 from whoever is calling 911 and then they'll give
15 their information and what their problem is and why
16 they need the police.

17 Q. And do you record those 911 calls, as well
18 as the dispatches?

19 A. Yes, everything is recorded.

20 Q. Okay. And do you keep those in your normal
21 course of business?

22 A. Yes. They're kept for 40 days. Our system,
23 we receive so many calls, there's so much
24 communication, we can't handle -- the computer system
25 can't handle all that information so it's kept 40

1 days.

2 Q. But if they're requested in those 40 days,
3 you can obtain those recordings --

4 A. Yes, that's correct.

5 Q. -- is that accurate?

6 A. Yes.

7 Q. Okay. And are you familiar with the
8 recordings that were reproduced in this case?

9 A. No.

10 Q. Are you familiar with the way they were kept
11 in your normal course of business?

12 A. Yes.

13 Q. All right. And before we get to the actual
14 calls, I'd like to ask you if you're familiar with a
15 phone number.

16 MS. MARTIN: If I could, Your Honor,
17 can I have 47-B placed on the screen, a small portion
18 of it for the witness?

19 THE COURT: You may.

20 MS. MARTIN: Pardon me, Your Honor, can
21 I also have that published to the jury?

22 THE COURT: You may.

23 BY MS. MARTIN:

24 Q. Ms. Cordilas, this is a section of phone
25 records that the jury has already seen.

1 A. Okay.

2 Q. Okay. And you're looking at -- that's March
3 22nd, 2019 at 6 p.m. Do you see the phone number on
4 the far right-hand side? It's 215-686-3128. Are you
5 familiar with that phone number?

6 A. Yes.

7 Q. What is it?

8 A. That's the operations desk for the police
9 department.

10 Q. Okay. And how would that phone number --
11 who uses that phone number?

12 A. When you work in the Philadelphia Police
13 Department, where you work as dispatchers, there's an
14 operations desk. There's three civilians and multiple
15 supervisors that work that desk. That's a phone
16 number that bosses call up or officers call up to give
17 you information about a particular assignment.

18 Q. If an individuals calls 911 and dispatch
19 needs to return a call to them, is that the phone
20 number that would be used?

21 A. Yeah, the supervisor on the street would
22 call the operations desk and say, yes, can I have the
23 CCI, which is confidential caller information
24 pertaining to this assignment. And then we would say,
25 hang on, we would bring it up, look at the

1 information, and then we would call that number back
2 and as soon as it rings, we'll say to the sergeant or
3 whoever calls, it's ringing and we hang up.

4 MS. MARTIN: Your Honor, at this time I
5 would like to play for the witness what's been marked
6 collectively as Government's 5-B.

7 MR. WITTELS: No objection.

8 THE COURT: Other defendants?

9 MR. PATTERSON: No objection.

10 THE COURT: No objections on behalf of
11 Mr. Stevens, no objections on behalf of Mr. Quinn.
12 Thank you.

13 MS. MARTIN: Before I play --

14 THE COURT: You may --

15 MS. MARTIN: Thank you, Your Honor, I
16 apologize.

17 THE COURT: You may proceed.

18 BY MS. MARTIN:

19 Q. Before I play the initial call, can you tell
20 us how any 911 reproduction begins?

21 A. It begins with the 911 call ticket.

22 Q. Okay.

23 A. So as soon as that phone picks up, it's
24 recorded.

25 Q. And what about the dispatch calls?

1 A. The dispatch calls, so when you take a 911
2 call, you get the information, you'll enter it into
3 our CAD system, which is computer aided dispatch. And
4 once that is entered, it will go to the dispatch
5 screen automatically, depending on what district it's
6 in, it'll go exactly to that district. And then the
7 dispatcher will review the job and give it to the
8 officers on the street.

9 Q. Okay.

10 MS. MARTIN: Can we please play the
11 first portion of Government's Exhibit 5-B, the 911
12 call at 5:43 p.m. and 36 seconds on March 22nd, 2019.

13 THE COURT: I don't know that 5-B has
14 been received into evidence, unless it was -- it was
15 just then.

16 (Government's Exhibit No. 5-B received)

17 MS. MARTIN: Yes.

18 THE COURT: Go ahead.

19 MS. MARTIN: Thank you.

20 THE COURT: You may.

21 (Government's Exhibit No. 5-B, 911 call played at
22 10:31:58 a.m. to 10:33:40 a.m.)

23 MS. MARTIN: If I could play the next
24 portion of Side B, which is the dispatch call at 5:57
25 and 54 seconds.

1 THE COURT: You may.

2 (Government's Exhibit No. 5-B, 911 call played at
3 10:33:57 a.m. to 10:34:58 a.m.)

4 MS. MARTIN: The next portion of 5-B at
5 5:58 and 55 seconds.

6 (Government's Exhibit No. 5-B, 911 call played at
7 10:35:03 a.m. to 10:35:30 a.m.)

8 BY MS. MARTIN:

9 Q. Before I play the next portion of 5-B, Ms.
10 Cordilas, I'm going to ask you a question. That was
11 at 5:58 and 55 seconds where an individuals say "I am
12 going to give him a call back." Did you hear that?

13 A. Yes.

14 Q. Okay. And would that call back have come
15 from the number that you identified earlier in your
16 testimony?

17 A. Yeah. So that sergeant 14-B is a sergeant,
18 he's going to call the front desk, which is that 3128
19 number and he's going to ask the person on phone, one
20 of us, a dispatcher saying, can you contact that
21 complainant back.

22 MS. MARTIN: All right. Continue with
23 5-B, please at 6:02:41.

24 (Government's Exhibit No. 5-B played, 911 call at
25 10:36:13 a.m. to 10:36:52 a.m.)

1 MS. MARTIN: And finally, Agent
2 Orchulli, if you could please play the last portion of
3 6-B at 6:11 and 53 seconds.

4 THE COURT: You said 6-B?

5 MS. MARTIN: I'm sorry, 5-B, Your
6 Honor, at 6:11 --

7 THE COURT: Thank you.

8 MS. MARTIN: -- and 53 seconds.

9 (Government's Exhibit No. 5-B, 911 call, played
10 at 10:37:09 a.m. to 10:37:41 a.m.)

11 MS. MARTIN: Thank you. I have nothing
12 further for this witness.

13 THE COURT: You may cross-examine.

14 MR. PATTERSON: On behalf of Mr. Smith,
15 Your Honor, no questions.

16 THE COURT: Mr. Wittels.

17 MR. WITTELS: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. WITTELS:

20 Q. Good morning.

21 A. Good morning, sir.

22 Q. I'm a little confused, I hope you can help
23 me out.

24 A. Okay.

25 Q. When someone calls 911, an operator answers.

1 A. That's correct.

2 Q. Correct? And as they -- the operator is
3 talking to the complainant, is that operator typing
4 something?

5 A. The remarks that they are giving them and
6 the location that they give them.

7 Q. Okay. And then that's what goes over to
8 dispatch?

9 A. That's correct.

10 Q. Okay. So the operator is listening and
11 typing at the same time?

12 A. That's correct, sir.

13 Q. Possible to make mistakes, would you agree?

14 A. In the remarks, sure.

15 Q. Sure. And so it's based on the remarks that
16 are sent over, and I guess that appears on somebody's
17 screen?

18 A. That appears on the dispatch side, that's
19 correct.

20 Q. So dispatch read through remarks, sees what
21 -- how the crime is characterized or categorized,
22 correct?

23 A. That's correct.

24 Q. And you have three set categories for
25 crimes, right?

1 A. That's correct.

2 Q. So the 911 operator not only has to
3 simultaneously type and listen and talk, but also
4 categorize what she's hearing or he hears.

5 A. Sure, yes.

6 Q. So that goes to a screen and then based on
7 what you see on the screen, since you say you've done
8 this, you then send that out to police radio or
9 directly to the district or what?

10 A. That goes through -- at this point, it's a
11 14th District has North Band, so that would be the
12 14th and the 35th, and this is a priority because it's
13 in progress and that would go over a citywide band
14 also.

15 Q. Okay. And that's based on the remarks that
16 you read on the screen.

17 A. And that code, that theft in progress.

18 Q. Theft in progress.

19 A. Yes.

20 Q. Which is something that the 911 operator
21 types in.

22 A. Yes, it's -- yes.

23 Q. Okay. Is there a supervisor who listens to
24 the calls and then can correct or change what shows up
25 on the dispatcher's screen?

1 A. If need be, they can make supplements.

2 Q. But that's not what's usually done, is it?

3 A. No.

4 MR. WITTELS: Okay. Thank you.

5 THE COURT: Ms. Meehan, do you have any
6 questions?

7 MS. MEEHAN: No, Your Honor.

8 THE COURT: Is there any follow-up, Mr.
9 Patterson?

10 MR. PATTERSON: There is not, Your
11 Honor.

12 THE COURT: Ms. Martin?

13 MS. MARTIN: No redirect, Your Honor,
14 thank you.

15 THE COURT: Ms. Cordilas, that
16 concludes your testimony. Thank you very much.

17 Ms. Martin?

18 MR. ECKERT: At this time, the
19 Government would rest, Your Honor.

20 THE COURT: I'm sorry?

21 MR. ECKERT: We don't have anymore
22 additional witnesses to present.

23 THE COURT: And so what are you doing?

24 MR. ECKERT: We are resting.

25 THE COURT: All right.

1 MR. ECKERT: Thank you.

2 THE COURT: That doesn't really mean
3 the Government is taking a rest. That means the
4 Government's evidence is over. And I might say, this
5 came as a little bit of a surprise. I didn't think
6 the Government's case would end this quickly and so I
7 didn't explain this to you last night.

8 All right. Arguments will, I am
9 certain, have to be presented, but I'd like to do that
10 out of the presence of the jury as is customary and we
11 won't do it now, with the jury in the courthouse.

12 So what we'll do, we'll proceed with
13 the defense cases and defer argument on the issues
14 that are typically presented to the Court at the end
15 of the Government's case. I'll hear all of the
16 defense testimony and other evidence and then we will
17 hear argument. And, of course, that will be followed
18 by closing speeches and my charge.

19 All right. Mr. Patterson, you may
20 proceed with your --

21 MR. PATTERSON: Your Honor, if I may --

22 THE COURT: -- case.

23 MR. PATTERSON: Your Honor, in
24 consultation with my client, Donnie Smith, we will not
25 be presenting any evidence and we would rest.

1 THE COURT: Thank you. I turn to you,
2 Mr. Wittels.

3 MR. WITTELS: Your Honor, on behalf of
4 Mr. Stevens, we rest.

5 MS. MEEHAN: Your Honor, before
6 beginning Mr. Quinn's defense, I would have a motion
7 pursuant to Federal Rule of Criminal Procedure Rule 29
8 on both counts.

9 THE COURT: You heard how we're going
10 to handle that.

11 MS. MEEHAN: Right, Your Honor.

12 THE COURT: That means not now.

13 MS. MEEHAN: Very well. Just
14 preserving that and I'll my first witness, Your Honor.

15 THE COURT: That is what I want you to
16 do. We'll hear argument on any motions, you'll
17 present any motions you have to me after all of the
18 evidence is presented.

19 MS. MEEHAN: Very well. Defense calls
20 Gisela, G-I-S-E-L-A, Garcia to the stand.

21 THE CLERK: Please raise your right
22 hand.

23 GISELA GARCIA, DEFENDANT QUINN'S WITNESS, SWORN

24 THE CLERK: Thank you. Please be
25 seated. Please state your full name for the record.

1 THE WITNESS: My name is Gisela Garcia.
2 That's spelled G-I-S-E-L-A, Garcia is spelled G-A-R-C-
3 I-A.

4 THE COURT: Good morning.

5 THE WITNESS: Good morning.

6 DIRECT EXAMINATION

7 BY MS. MEEHAN:

8 Q. Ms. Garcia, where do you work?

9 A. I work for the Federal Public Defenders
10 Office of Philadelphia.

11 Q. And how long have you worked there?

12 A. It'll be four years in a week.

13 Q. And what is your job title at the Defender
14 Office?

15 A. I'm an investigator.

16 Q. And as part of your duties as an
17 investigator, did you perform any work or review in
18 connection with the case of United States v Donnie
19 Smith, et al, including the case of Mr. Quinn, Maurice
20 Quinn?

21 A. Yes.

22 Q. And what was that?

23 A. Among many things I --

24 Q. Well, I'll cut to the chase here. Did you
25 review any store video from the RG Grocery?

1 A. I did.

2 Q. And was that video provided by the
3 Government?

4 A. Yes.

5 Q. And if you could briefly explain, did the
6 video involve different camera angles?

7 A. Yes.

8 Q. And would you explain to the members of the
9 jury what you mean by -- what that meant?

10 A. There were six different camera angles
11 footage from the store, from six different cameras.

12 Q. And if I could --

13 MS. MEEHAN: Your Honor, I'd like to --
14 this was previously been marked in our defense trial
15 exhibit binder, D-1 through D-6 and they're different
16 camera video feeds.

17 Q. So can I ask you to look at D-1? Do you
18 recognize that?

19 A. Yes.

20 THE COURT: What is the exhibit number?

21 MS. MEEHAN: I'm sorry, D-1, Your
22 Honor.

23 THE COURT: My exhibit book doesn't
24 have any of these. It starts with D-8.

25 MS. MEEHAN: Your Honor, that includes

1 D -- I thought the Government was putting the entire
2 video into evidence and they put in a compilation.

3 MR. ECKERT: We did offer the entire
4 video.

5 MS. MEEHAN: You did? Okay.

6 THE COURT: The entire video was in
7 evidence.

8 MS. MEEHAN: Okay.

9 THE COURT: What are these exhibits D-1
10 through D-6?

11 MS. MEEHAN: These are the different
12 cameras, Your Honor. If I may have a moment.

13 Your Honor, I'll just -- if they agree
14 that they're in evidence, I'll just ask to move D-1
15 through D-6. These are cameras 4, 6, 7, 8, 12 and 13.
16 I'd ask to move them into evidence and --

17 MR. ECKERT: We have no objection, Your
18 Honor.

19 THE COURT: I'm sorry, I'm not certain
20 what is being moved into evidence. I note from your
21 exhibit book that you've identified different cameras,
22 4, 6, 7, 8, 12 and 13.

23 MS. MEEHAN: Your Honor, may I have a
24 moment with counsel?

25 (Pause)

1 MS. MEEHAN: Your Honor, D-1 is one
2 camera view from behind the counter, D-2 -- and this
3 is what I was going through --

4 THE COURT: Now, what are we talking
5 about now --

6 MS. MEEHAN: -- with Ms. Garcia.

7 THE COURT: -- something that's
8 stipulated?

9 MR. ECKERT: I mean I think we're
10 talking about the same video, so -- but if they want
11 to move in 1 through 6 we have no issue with that, but
12 I --

13 THE COURT: But what is 1 --

14 MS. MEEHAN: It's a video --

15 THE COURT: What is --

16 MS. MEEHAN: -- it's a short video of
17 the -- of RG Grocery, Your Honor, from a certain
18 camera, camera number 4.

19 THE COURT: And you're going to show
20 the video?

21 MS. MEEHAN: I'm not going to, but I
22 want it to be available to the jurors because I will
23 be referring to various cameras -- views in my closing
24 argument.

25 THE COURT: You want it to be available

1 to the jury.

2 MS. MEEHAN: Yes, Your Honor. It's --
3 the entire store video is in evidence, Your Honor.

4 THE COURT: I understand that.

5 MS. MEEHAN: But it hasn't been
6 differentiated by the Government, by the camera view.

7 THE COURT: Do you have any photos that
8 demonstrate the camera view?

9 MS. MEEHAN: I have a disk for -- I
10 could ask to publish that to the jury. I hadn't
11 gotten that far but.

12 THE COURT: Well, when you say you want
13 it to be available to the jury, I don't quite
14 understand that. The entire video is in evidence.

15 MS. MEEHAN: It --

16 THE COURT: I don't understand how
17 we're going to individuate these -- well, there are
18 six in total, six and you describe them as camera
19 views. You'll have to tell me how to do that. How
20 will you do that?

21 MS. MEEHAN: Very well, Your Honor. So
22 if I -- if the witness could answer, this is camera
23 number 4, Your Honor, it's in evidence. I'd ask that
24 it be published to the jury. I'm not going to play it
25 now, we would be here --

1 THE COURT: All right. Fine. What's
2 camera number 4?

3 MS. MEEHAN: D-1.

4 THE COURT: All right. And you're
5 going to put D-1 on the screen?

6 MS. MEEHAN: Yes, it should be on the
7 jury's screen.

8 THE COURT: It's not. Now it is.

9 MS. MEEHAN: Thank you.

10 BY MS. MEEHAN:

11 Q. And, Ms. Garcia, what are we --

12 THE COURT: Just a moment.

13 MS. MEEHAN: Sorry.

14 THE COURT: Thanks, Michael.

15 Q. Ms. Garcia --

16 MS. MEEHAN: Or, I'm sorry, I didn't
17 know if Your Honor was ready.

18 THE COURT: That's fine.

19 Q. Ms. Garcia, what are we looking at on the
20 screen?

21 A. It appears to be camera 4.

22 Q. And did you download camera 4 of -- in the
23 RD Grocery?

24 A. Camera 4 of the footage that was acquired
25 from RD Grocery by police.

1 Q. Okay. And did you put this on a disk?

2 A. I did.

3 MS. MEEHAN: Okay. And I will hand the
4 disk to the Court at the conclusion of Ms. Garcia's
5 testimony, Your Honor. And can we take D-1 down and
6 if you could pull up D-2. This is part of the G-1
7 that's already in evidence, Your Honor.

8 THE COURT: Well, I gather that G-1
9 through G-6 are all part of G-1. D-1 through D-6 is
10 all part of --

11 MS. MEEHAN: Correct, correct.

12 THE COURT: -- G-1, the video.

13 MS. MEEHAN: Correct. But this
14 differentiates what camera the film is on. So if
15 we're talking about different things to the jurors at
16 closing and we're going to refer to which -- where
17 they can see it, if they ask to see it, or if they
18 wish to see it.

19 THE COURT: Well, we'll see about that
20 when we get there.

21 MS. MEEHAN: Very well.

22 THE COURT: What's on the screen now?

23 THE WITNESS: It appears to be footage
24 from camera 6 of RD Grocery.

25 BY MS. MEEHAN:

1 Q. And did you also include this on the disk?

2 A. I did.

3 MS. MEEHAN: And can we pull up D-3?

4 Q. And can you identify this?

5 A. This is camera 7 from the footage acquired
6 from RD Grocery which I'd put on the disk as well.

7 Q. Well, acquired from RD Grocery, was it
8 provided by the Government?

9 A. Provided by the Government, correct.

10 Q. Very well.

11 MS. MEEHAN: And can we put up D-4?

12 THE WITNESS: This appears to be
13 footage from camera 8.

14 Q. And the entire --

15 A. Acquired from RD Grocery by the Government,
16 provided by the Government, excuse me, which I put on
17 the disk as well.

18 Q. And the entire video from camera 8 as well
19 as cameras 4, 6 and 7 that's on the disk.

20 A. The whole video, correct.

21 Q. Very well.

22 MS. MEEHAN: And call up D-5 please.

23 THE WITNESS: This is the footage from
24 camera 12, the entirety of which I put on the disk as
25 well.

1 Q. Very well. Finally, D-6.

2 A. And this is the footage from camera 13 of RD
3 Grocery provided by the Government, the entirety of
4 which I put on the disk.

5 MS. MEEHAN: Thank you, I have nothing
6 further. Your Honor, I would move -- I'll call it I
7 guess Defense Exhibit 1-A and it contains D-1 through
8 D-6, which is also part of G-1 into evidence.

9 THE COURT: You're moving D-1-A?

10 MS. MEEHAN: Well, the disk, Your
11 Honor, has D-1 through D-6.

12 THE COURT: Well, we'll receive in
13 evidence D-1 through D-6, all of which are on a single
14 disk --

15 MS. MEEHAN: Correct.

16 THE COURT: -- D-1-A.

17 (Defendant Quinn's Exhibit Nos. D-1-A, D-1
18 through 6 were received)

19 MS. MEEHAN: Correct.

20 THE COURT: And all of these exhibits
21 are part of the video that we watched during the
22 Government's case. I think that was Government
23 Exhibit 1, it's 1-A?

24 MR. ECKERT: Correct, Your Honor. The
25 whole video is 1, and the compilation that we watched

1 was 1-A.

2 THE COURT: Fine.

3 MS. MEEHAN: Thank you. I have nothing
4 further.

5 THE COURT: Is there --

6 MR. ECKERT: No, Your Honor, we don't
7 have any cross-examination.

8 THE COURT: I'll get it out. Is there
9 any cross-examination?

10 MR. ECKERT: No, Your Honor, thank you.

11 THE COURT: Any cross-examination, Mr.
12 Patterson?

13 MR. PATTERSON: No, Your Honor, thank
14 you.

15 MR. WITTELS: None.

16 THE COURT: Mr. Wittels?

17 MR. WITTELS: No, sir.

18 THE COURT: All right. Ms. Garcia,
19 that concludes your testimony.

20 THE WITNESS: Thank you.

21 THE COURT: Thank you very much. Well,
22 we'll have to sort out the exhibits.

23 I'm told, Mr. Eckert, that Government
24 Exhibit 1 was never moved in evidence. It's not in
25 evidence. 1-A, 1-B, 1-C are in evidence and there are

1 86 still photos that are in evidence. But G-1 was not
2 in evidence. Why don't you explain for me the
3 difference, for me and the jury, the difference
4 between G-1 and G-1-A.

5 MR. ECKERT: Your Honor, G-1 is the
6 entire surveillance video. G-1 is a compilation video
7 that was played to the jury.

8 THE COURT: Are you moving G-1?

9 MR. ECKERT: We would move it at this
10 time, Your Honor, yes.

11 THE COURT: Well, I will treat that as
12 having -- is there any objection to treating that --
13 this motion to move G-1 into evidence?

14 MR. PATTERSON: No, Your Honor.

15 THE COURT: Treating that as part of
16 the Government's case in chief.

17 MR. PATTERSON: No, Your Honor.

18 MR. WITTELS: No objection.

19 MS. MEEHAN: No, Your Honor.

20 THE COURT: No objection. Fine, then
21 Government Exhibit 1, the entire surveillance video
22 described as complete footage in the Government's
23 exhibit list is received in evidence.

24 (Government's Exhibit No. 1 received)

25 MR. ECKERT: Thank you.

1 THE COURT: All right. And you're
2 resting now, Ms. Meehan?

3 MS. MEEHAN: Oh, I'm sorry. Yes, on
4 behalf of Maurice Quinn, the defense rests.

5 THE COURT: All right. Now, I have
6 some good news. All of what happened today came as a
7 bit of a surprise. And it's a good surprise, but it
8 leaves the schedule in well, not exactly the way I
9 would've liked it.

10 The evidence is completed. The parties
11 have rested. What remains, argument on some motions
12 that are typically presented at the end of the
13 Government's case, and I'll hear those motions. But
14 we have closings and my charge.

15 And the charge was subjected to a
16 number of different arguments last night for the first
17 time beginning at about 5:30. And we haven't finished
18 addressing all of those legal issues. We stayed until
19 about 7:30 or so but didn't get them done.

20 I asked counsel how they wanted to
21 proceed and we had thought there would be more
22 evidence today, but it turns out not. And they tell
23 me they'd like to begin their closings on Monday
24 morning. And I think that's reasonable because I
25 haven't finished addressing the issues that were

1 presented last night for the first time.

2 And the long and short of what I'm
3 saying is, that I'm going to excuse you for the day to
4 reconvene on Monday morning at 9:30 when we will start
5 the closing speeches. The Government will go first,
6 then the defendants, each defendant, and that will be
7 followed by the Government's rebuttal.

8 Closing arguments or closing speeches
9 are not evidence. The parties argue in their closing
10 speeches why they think you should find in favor of
11 their clients. Although not evidence I'm told by
12 many, many jurors that they find closing speeches very
13 important because they help focus the jury on the
14 issues the parties think are significant. It doesn't
15 mean you have to accept what they say about a
16 significant issue, but it will cause you to focus on
17 those issues.

18 I'm a little bit apologetic because I
19 don't like gaps in the trial. And in this case, it's
20 unavoidable. What does that mean on this cold cloudy
21 afternoon? I guess its still morning, morning and
22 afternoon, it means that you're in the city if you
23 care to be or you can head home or do whatever.

24 We'll see you Monday at 9:30. So final
25 weekend instructions, I think you can probably give

1 them to yourselves, I've said them so many times. But
2 don't discuss the case among yourselves, even though
3 the evidence is now completed. Wait until you've
4 heard the closing speeches and my charge and then you
5 will begin your deliberations.

6 Don't talk to anyone about the case.
7 If anyone tries to talk to you about the case, say
8 nothing to them, and report that to me. And don't
9 read anything that might be written about the case in
10 any newspaper. Don't watch anything that might be
11 broadcast on television that deals with the case, the
12 same is true of anything that might be broadcast on
13 radio.

14 I have no other instructions for now.
15 Leave your juror notebooks in the jury room and on
16 Monday what we will have is closing arguments and the
17 charge. And as I told you, I will deliver the charge
18 orally and then give you a number of copies of the
19 charge with a table of contents that will enable you,
20 if you have an issue regarding or a question regarding
21 a particular charge in the indictment, or an essential
22 element, you can go right to the table of contents and
23 pull it out and read it.

24 And if that's not sufficient, if you
25 still have questions, you can send me a note saying,

1 Judge, we need help, please explain whatever and I'll
2 call you back in the courtroom to do that.

3 So the case is just about over, be a
4 little patient and we'll see you Monday morning at
5 9:30.

6 THE CLERK: All rise.

7 THE COURT: Have a good weekend.

8 (Jury out)

9 THE COURT: Be seated, everyone.

10 Now, what do we need? First of all,
11 we'll hear argument before I let you go. But we need
12 quite a few things. We need an exhibit list from you,
13 Ms. Meehan, with the exhibits that have been received
14 in evidence noted. Now, I note we have a list in your
15 exhibit book, but I don't know. For example, you talk
16 about photos. I don't think any of your photos were
17 identified. You had something called Screen Grabs and
18 documents. I don't think any of that is in evidence,
19 but I want an exhibit list of covering all of the
20 exhibits that are offered. I don't think any exhibits
21 -- I know no exhibits were offered by the co-
22 defendants.

23 I want and will decide on a time, I
24 want a completed exhibit list from the Government
25 covering the exhibits that were received in evidence.

1 Many were not presented.

2 I think we should -- well, are there
3 any -- we have the charge, but I think we should do
4 that last. Before argument on any motions, is there
5 anything that needs to be presented? Mr. Eckert?

6 MR. ECKERT: No, Your Honor.

7 THE COURT: Patterson?

8 MR. PATTERSON: I'm sorry, Your Honor,
9 is this for --

10 THE COURT: Anything else that needs to
11 be presented other than argument on motions --

12 MR. PATTERSON: No.

13 THE COURT: -- and the charge?

14 MR. PATTERSON: No.

15 THE COURT: Mr. Wittels?

16 MR. WITTELS: Nothing, sir.

17 THE COURT: Ms. Meehan?

18 MS. MEEHAN: You mean with respect to
19 Rule 29?

20 THE COURT: No.

21 MS. MEEHAN: I'm sorry, I misheard the
22 Court.

23 THE COURT: Anything that needs to be
24 addressed other than argument on the motions, the Rule
25 29 motions and the charge.

1 MS. MEEHAN: No, Your Honor.

2 THE COURT: All right. Then we'll
3 start on the Rule 29 motions.

4 Who goes first?

5 MS. MEEHAN: Your Honor, I want to
6 apologize I really thought that the rule -- I just
7 read Rule 29 over again and I apologize for raising it
8 at the time I did. I thought that was necessary to
9 preserve it. But having reread it, Your Honor is
10 correct, I could have made it before -- at the
11 conclusion of my case, which I'm doing now.

12 Your Honor, I move without argument to
13 -- under Rule 29 to dismiss Count I. With respect to
14 Count II, I think Count II I think there is a dearth
15 of evidence that Mr. Quinn who is charged under the
16 accomplice liability theory in Count II of aiding and
17 abetting, 924(c), having a gun, during in and -- or
18 brandishing a gun during and in relation to a robbery,
19 there is a dearth of evidence that Mr. Quinn had any
20 advance knowledge, which is a requisite for Mr. Quinn
21 to be found guilty of Count II. And there's
22 insufficient evidence on this record for that charge
23 to go to the jury as it stands.

24 There may have been a disjuncture, some
25 evidence, and that's arguable of continued

1 participation. But that alone is not sufficient to
2 carry Count II.

3 THE COURT: And that's the basis for
4 your motion?

5 MS. MEEHAN: Correct, Your Honor.

6 THE COURT: Mr. Eckert, do you want to
7 respond?

8 MR. ECKERT: Sure. I would just say
9 that there's a couple of things. First, there's
10 plenty of circumstantial evidence even before he
11 enters the store for the second time, but all three
12 individuals were outside.

13 I'll also note that Mr. Stevens says,
14 I'll be back; Mr. Quinn says I'll be back; and in
15 fact, they both -- they returned shortly thereafter.
16 When Mr. Smith and Mr. Stevens come in the store, they
17 brandished guns right away. Given that all three of
18 them were outside at least for a short time, that
19 would be enough evidence to go to the jury. But based
20 on the advanced knowledge doctrine, the fact that the
21 robbery itself does not actually happen until well
22 after the guns are brandished. That also certainly
23 would be sufficient to go to the jury.

24 The guns of Mr. Smith and Mr. Stevens
25 are brandished right away when they go in the store.

1 Mr. Quinn has an example opportunity to walk away at
2 that point, and throughout the process before the
3 money is actually taken from the cash register, which
4 happens well after that.

5 So on that basis, Your Honor, we submit
6 to the Court that there's enough evidence to go to the
7 jury on Count II.

8 THE COURT: All right. I note that in
9 the charge you presented to me Ms. Meehan has an
10 agreed upon charge, and I'm not saying I'll give it,
11 but let me read it.

12 If a defendant continues to participate
13 in a crime after a gun was displayed or used by a
14 confederate, you may permissibly infer from the
15 defendant's failure to object or withdraw from the
16 crime at that time that he had advanced knowledge of
17 the confederates' plan. You are not required to draw
18 this inference, however. It is entirely up to you to
19 determine the facts.

20 Now, again I'm not certain that I will
21 include this in the charge. But certainly an
22 opportunity to withdraw is required under the case law
23 as I understand it before a defendant can be found
24 guilty of aiding and abetting the crime of using or
25 carrying a firearm during and in connection with a

1 crime of violence.

2 In this case, there's ample evidence
3 that guns were displayed at a time when Mr. Quinn had
4 an opportunity to withdraw, that is to leave and he
5 did not. And so your motion on that ground is denied.

6 With respect to Count I that addresses
7 the issues raised on Count II. With respect to Count
8 I, I believe the Government has presented sufficient
9 evidence that Mr. Quinn was a participant in the Hobbs
10 Act robbery.

11 He took the \$100 he claimed was
12 provided to him or in payment for what was provided to
13 him in the form of phony bills, \$100 bills, through
14 the ATM machine.

15 So I think there's sufficient evidence
16 to go to the jury with respects to Count I and II
17 regarding Mr. Quinn. Your motion is denied.

18 Mr. Patterson?

19 MR. PATTERSON: Thank you, Your Honor.
20 Your Honor, I would move to dismiss Count I. I
21 believe there's insufficient evidence introduced at
22 trial to support more specifically element number two,
23 that the defendant did knowingly and willfully by
24 robbery.

25 The evidence shows and demonstrates

1 that this was not a robbery. Insofar as my client's
2 participation in the events that occurred on the day
3 in question, he disarmed the store clerk who pulled a
4 firearm, who loaded the firearm, and who had it at his
5 side ready to be used. We do have evidence that that
6 firearm could have been used to discharge a
7 projectile.

8 I would argue that there's the
9 insufficient evidence insofar as there is no robbery,
10 so therefore, Count I must fall.

11 With respect to Count II, again I would
12 submit that there's insufficient evidence introduced
13 at trial to allow that charge to go to the jury for
14 final deliberation. Specifically with reference to
15 Counts -- I mean for elements two and elements three,
16 it is the knowingly use and carrying of a firearm.

17 Both fact witnesses and expert
18 witnesses stated that the only firearm that satisfies
19 the definition of a firearm would be the firearm that
20 was in the possession of the store clerk, first name
21 is Joell (ph). That firearm based upon the evidence
22 was taken by my client, placed in his right pocket,
23 and I would submit that the evidence introduced on
24 that point was that that gun never left his right
25 pocket until he exited the store.

1 There's been no evidence that the
2 alleged firearms held by my client when he first came
3 into the store, that he allegedly pointed at the store
4 clerk was, in fact, a firearm. If there's
5 insufficient evidence to prove that a firearm was, in
6 fact, the firearm as defined as a firearm, then that
7 Count II should also fail. Thank you.

8 THE COURT: Mr. Eckert.

9 MR. ECKERT: Your Honor, with regard to
10 Count I, the intent element, there's been evidence by
11 two of the lay witnesses that Mr. Smith said, "take
12 everything" or words to that effect which would
13 clearly indicate his intent to join the robbery.

14 Second, he disarms the complaining
15 witness which is the action that facilitated the
16 robbery, that's the only thing that allowed the
17 robbery to occur was after Mr. Smith personally
18 disarmed the complaining witness.

19 So on both of those two grounds,
20 there's sufficient evidence on Count I. For Count II,
21 the direct evidence of that would be, of course, the
22 victim's testimony as well as Mr. Sanchez's testimony
23 that the gun appeared real to them.

24 Secondly, as a circumstantial basis, we
25 would argue to the Court the fact the defendant left -

1 - Mr. Smith left a Glock in the car that he crashed
2 which cost \$600 or over \$600 according to Ms.
3 Rodriguez, there's no way that a person would leave a
4 real gun that cost \$600 in a car, and then take a fake
5 gun with them.

6 Secondly, after he took the real gun,
7 after he took the real Glock and put it in his pocket,
8 he after that pointed the gun at Mr. Ventura's face.
9 Again, there's no reason anyone would take a real gun
10 and put it in their pocket and then take a fake gun
11 and point it to someone's face.

12 So on all of those bases, Your Honor,
13 we would ask the Court to deny Mr. Smith's motion to
14 Rule 29. Thank you.

15 THE COURT: For the reasons advanced by
16 the Government, Mr. Patterson, your Rule 29 motion is
17 denied.

18 I think there's ample evidence. Mr.
19 Smith's participation in the robbery, starting with
20 the "take everything" comment and the fact that he
21 disarmed Mr. Ventura, kept the weapon, I think that
22 enabled the robbery to proceed.

23 There's also sufficient evidence that
24 he used or carried at least one firearm during and in
25 connection with the robbery. The store weapon was in

1 his possession from the time he took it from Mr.
2 Ventura until he left it in his car after he crashed.
3 And he had his own weapon, a weapon that was
4 brandished as he entered the store. And without
5 exhausting all of the evidence, without identifying
6 all of the evidence that supports the Government's
7 argue with respect to his role in the two crimes
8 charged, I think that's sufficient to require the
9 denial of the Rule 29 motion.

10 Mr. Wittels.

11 MR. WITTELS: Your Honor, Mr. Stevens -
12 - I move for dismissal under Rule 29 for the following
13 reason. Mr. Stevens stands in a somewhat different
14 position than the co-defendants.

15 The Government's theory and the
16 evidence would have to be that they formed the
17 conspiracy to rob outside and came in to execute it,
18 in order for Mr. Stevens to be part of a robbery.

19 Because what happens before the money
20 is taken, Mr. Stevens' position vis a vis the other
21 people in the RD Grocery becomes one of trying to
22 resolve the problem.

23 You saw -- you've seen the video tape.
24 You can judge from his body language and from the
25 testimony of the witness Sanchez that he is trying to

1 solve the problem. He is trying to diffuse the
2 situation, and in fact, he says to Mr. Sanchez and to
3 Ms. Rodriguez, "I'm trying to fix it, I will get your
4 money back, I'll get your gun back."

5 So he is not a participant in the
6 robbery. He may be a participant in the argument, but
7 his position becomes one of problem solver before the
8 robbery takes place.

9 You would have to say that that's an
10 act, he's really just covering it up. He's
11 dissimulating in order to find him as a participant in
12 the robbery. The argument about the gun very simply
13 is not any evidence that it's a real gun.

14 THE COURT: Mr. Eckert.

15 MR. ECKERT: Your Honor, briefly in
16 response to that. So Mr. Stevens is actually in the
17 store and hears Mr. Quinn demanding money. He leaves
18 the store and comes back with a firearm. His intent
19 is perfectly clear, it's to take the property, its to
20 facilitate Mr. Quinn's taking the property of the
21 store.

22 So the fact that he says "I'll be back"
23 gives him all the intent, we would argue, that that
24 should go to the jury. He also, I would note, there's
25 -- he points his gun at Mr. Ventura, and Mr. Ventura

1 is not disarmed until after that point. It's not as
2 if he just keeps his gun at his side, that's his
3 pointing the weapon at Mr. Ventura. That's what
4 causes Mr. Ventura to provide his gun to Mr. Smith.
5 That is certainly enough evidence that would get Mr.
6 Stevens to the jury as an aider and abettor.

7 I also note that he controls the
8 employee, Mr. Sanchez. There's ample evidence from
9 the video that he puts his hands up and he directs Mr.
10 Sanchez to stay off to the side, which prevents him
11 from intervening in any way. That would also be
12 sufficient under any aiding and abetting theory for
13 Count I to go to the jury.

14 With regard to Count II, the strongest
15 circumstantial evidence there would be the fact that
16 as soon as Mr. Quinn is fleeing Mr. Stevens provides
17 his gun to Mr. Quinn. There's no reason to get rid of
18 a fake gun in that moment.

19 Mr. Stevens obviously believed and
20 there was evidence in the record that the police were
21 about to be there. The fact that he feels the need to
22 provide his gun to Mr. Quinn, given that Mr. Quinn is
23 going to immediately leave the store is ample evidence
24 that that firearm is real.

25 In addition, of course, we rely on the

1 direct evidence of the victim testimony that Mr.
2 Stevens' firearm appeared real to them. Thank you.

3 THE COURT: Mr. Wittels, for the
4 reasons advanced by the Government, I'm going to deny
5 your Rule 29 motion. I agree that what started out by
6 Mr. Stevens is an effort to solve the problem
7 escalated and it escalated into a robbery.

8 He heard the argument, he left the
9 store, came back with a gun as argued by the
10 Government. That is sufficient evidence that although
11 not the strongest evidence in the world, it's
12 sufficient evidence to warrant submitting the Hobbs
13 Act robbery charge to the jury.

14 As far as the gun count is concerned,
15 he had a gun. The issue you raise is whether it was a
16 real gun. I think there is sufficient evidence,
17 although the guns were not retained -- obtained,
18 sufficient evidence either -- I'm just trying to
19 think, whether it was Ventura or Emanuel Sanchez who
20 said the gun looked real to him, but in any event,
21 there's evidence that the gun was a real gun.

22 And on that issue, I noted, the
23 Government noted Stevens ended up giving the gun, his
24 gun to Quinn as Quinn was leaving, just as the police
25 sirens were heard and the police car appeared in the

1 video through the open front door.

2 So for all of those reasons, your Rule
3 29 motion on behalf of Mr. Stevens is denied.

4 All right. I think what we should do
5 now is see what we can accomplish with respect to the
6 charge. There's some things that need to be
7 completed. The charge wasn't completed. It was
8 dependent upon you to finish. The bracketed parts,
9 and when a bracketed part of the charge is submitted,
10 because that's the way the Third Circuit model
11 instructions are presented, it's up to counsel to say
12 yes or no on what's bracketed, a little of that.

13 But the major issues are the aiding and
14 abetting charge with respect to Count II and the
15 Pinkerton charge. So what I'm going to do, I'm not
16 going to ask you about your charging issues yet. I'll
17 do that later if you have any. I'm going to cover the
18 few remaining things that need to be completed and
19 then talk about what was submitted late last night.

20 Do you have a copy of the charge dated
21 January 31st? No?

22 MR. PATTERSON: No.

23 (Court confers with clerk)

24 THE COURT: All right. We'll start
25 with page 11.

1 Turn to paragraph 7 or part 7, it's
2 entitled "Audio Visual Recordings - Consensual."

3 (Court confers with clerk)

4 THE COURT: We were concerned about and
5 this really impacts you, Mr. Patterson. It's entitled
6 -- the charge is entitled "Audio Visual Recordings -
7 Consensual." And it reads, "During the trial, you
8 saw, heard audio visual recordings of the defendants
9 made without their knowledge." And in rereading that,
10 I was concerned that the jury might get the impression
11 that the 911 call was made by the defendant, based on
12 that charge.

13 And so I have decided to add the words
14 "and others." It will now read, "During the trial,
15 you saw, heard audio visual recordings of the
16 defendants and others," so as not to identify that 911
17 call as having come from the defendant. That's up to
18 the jury to decide. Mr. Patterson?

19 MR. PATTERSON: That's acceptable, Your
20 Honor.

21 THE COURT: It should be more than
22 acceptable, it should be thank you, Your Honor.

23 MR. PATTERSON: I was going to say
24 thank you actually.

25 THE COURT: Okay. And I was just being

1 facetious. There's certainly no need to thank me for
2 doing the right thing.

3 The next thing we need, the
4 stipulations, do you have them?

5 MR. ECKERT: We would just ask time to
6 consult, Your Honor, I think that would be -- we would
7 request that.

8 THE COURT: Well, we'll -- you'll have
9 plenty of time to consult because I'm going to have to
10 -- well, I'm going to have to spend time on the aiding
11 and abetting charge and then we will reconvene. And
12 you can remain in the courtroom when I leave the
13 bench, but you're going to have to get the
14 stipulations.

15 MR. ECKERT: Understand, Your Honor.

16 THE COURT: And decide how you want to
17 present them.

18 MR. ECKERT: Right.

19 THE COURT: Right now I have no idea of
20 all the things you've stipulated to. I've never seen
21 stipulations handled in this somewhat casual way. I
22 mean, Ms. Meehan walked up to the microphone, we've
23 stipulated that during the period before the robbery
24 there were a number of telephone calls between these
25 two numbers. Is that reduced to writing anywhere?

1 MS. MEEHAN: Your Honor, it's in my --
2 and I just want to --

3 THE COURT: No, no, no. Is that
4 reduced to writing anywhere?

5 MS. MEEHAN: Well, I'd like to type it,
6 but it is reduced to writing.

7 THE COURT: Where? Oh, handwriting?

8 MS. MEEHAN: Yes.

9 THE COURT: Oh, I see. Well, that's
10 not the way --

11 MS. MEEHAN: Right.

12 THE COURT: -- I think we should
13 present evidence and that's evidence.

14 MS. MEEHAN: Well, that was on the fly,
15 Your Honor, because if Your Honor will recall I didn't
16 think that those calls were coming in for any other
17 purpose, but as they related to Mr. Smith --

18 THE COURT: At least for the --

19 MS. MEEHAN: -- not as to Mr. Quinn.

20 THE COURT: -- last two days, you knew
21 that was in -- in any event, an example of what we
22 don't want in a case. We want all of the stipulations
23 reduced to writing and that will have to be done by --
24 well, I don't know it needs to be done today. It
25 certainly has to be done by Monday by the time we

1 reconvene.

2 Well, let's talk now. Do we need in
3 the charge either a summary or some other specific
4 reference to the stipulation?

5 MR. ECKERT: I'm sorry, Your Honor.
6 May I just have a moment to think about that?

7 THE COURT: Yes.

8 MR. ECKERT: Thank you.

9 (Pause)

10 MR. ECKERT: I don't believe we would
11 need a summary. I think that counsel would be happy -
12 - or not happy, but counsel would certainly be free to
13 argue them in closing, any of the issues. But I did
14 not -- we don't request the -- a --

15 THE COURT: All right. Well, let's --
16 then we'll make it clear. The parties to each
17 stipulation shall reduce the stipulations to writing
18 and present them to the Court for -- and admit them
19 into evidence no later than Monday morning when we
20 reconvene at 9:30.

21 And that brings to mind how to handle
22 the exhibits. I direct by Monday morning at 9:30, the
23 Government put its exhibits that were received in
24 evidence into an exhibit book. That means that you'll
25 remove all of the exhibits that were not received in

1 evidence.

2 Is there an issue as to whether all of
3 those exhibits will go out with the jury?

4 MR. ECKERT: I think but the gun, Your
5 Honor.

6 THE COURT: Pardon me?

7 MR. ECKERT: I think but for the gun,
8 everything would go back.

9 THE COURT: Is there any objection to
10 that, Mr. Patterson?

11 MR. PATTERSON: No, Your Honor.

12 THE COURT: Mr. Wittels?

13 MR. WITTELS: No objection.

14 THE COURT: Ms. Meehan?

15 MS. MEEHAN: No, Your Honor.

16 THE COURT: All right. Well then the
17 Government will compile its exhibits for presentation
18 -- well, for taking back to the jury room. And that
19 will be presented by February 3rd at 9:30.

20 All right. Let's finish -- pardon me?

21 (Court and clerk confer)

22 THE COURT: There seems to be a
23 question -- Michael. About exhibits received -- Ms.
24 Meehan, were any of your exhibits, other than the CD
25 offered in evidence?

1 MS. MEEHAN: Your Honor, I believe 8, 9
2 and 10 were, as well as the Court today admitted D 1-
3 A, which is -- includes D-1 through 6 but not 7.

4 MR. ECKERT: Right, we had 8, 9, 10
5 being admitted during the Government's case, Your
6 Honor. I don't mean to interrupt.

7 THE COURT: All right. Well then,
8 you'll have 8, 9 and 10 available to give to the jury.

9 MS. MEEHAN: Thank you.

10 THE COURT: 1 through 7 --

11 MS. MEEHAN: No, 1 through 6, Your
12 Honor.

13 THE COURT: 1 through 6 were received,
14 but they are compiled into a CD.

15 MS. MEEHAN: They are, and that I
16 called D 1-A, and I'll hand that to the Court now if
17 it pleases the Court.

18 THE COURT: Well, it's your exhibit and
19 it's offered in evidence. But you said you had G or D
20 1-A, first of all, it should be D Quinn when there are
21 three defendants --

22 MS. MEEHAN: You're right.

23 THE COURT: -- D-Quinn 1-A is the only
24 exhibit covering the first six, let me just look, the
25 first six exhibits.

1 MS. MEEHAN: Correct, Your Honor, and I
2 labeled Quinn D 1-A, D-1 through 6.

3 THE COURT: Okay.

4 MS. MEEHAN: Should I hand that to the
5 court or --

6 THE COURT: Yes.

7 MS. MEEHAN: These are two copies, Your
8 Honor of D 1-A and, Your Honor, the Government is
9 aware of these because the Government provided them.
10 It's just that they're each camera individually on
11 this CD.

12 THE COURT: Michael. While we're on
13 it, I don't want to -- I want Ms. Meehan to answer the
14 question. Assuming the jury asks for that exhibit,
15 you see if we give that disk to the jury, it tells
16 them nothing. What do you propose?

17 MS. MEEHAN: Well, this was an issue --
18 Your Honor, I was thinking about this last night when
19 I was writing my closing, that there are portions of
20 the video that I will be referring to, and I assume
21 the Government will be doing the same in their
22 closing.

23 And they had still shots, but the video
24 is obviously different from a still shot and if I
25 said, oh, look at time 16:54 it means nothing unless

1 you direct them to the camera that's showing that
2 particular activity. Because on camera 6 there's
3 something going on, but it's a different activity on
4 camera 13 at that same time. So that was the problem
5 with the compilation that the Government put in, which
6 is why I called Ms. Garcia today to put in the entire
7 video that's in G-1, but it's different -- it's split
8 between the cameras.

9 So that if the jurors were to say, well
10 we want to look at 16:54 on camera 7, either for the
11 Government frankly or for the defense, they could do
12 so with this -- with what we put in today as D 1-A.

13 THE COURT: Tell me how you would do
14 that.

15 MS. MEEHAN: Well, how they would do it
16 in any video case, Your Honor.

17 THE COURT: They're in the jury room.

18 MS. MEEHAN: Right.

19 THE COURT: They want to see an
20 exhibit.

21 MS. MEEHAN: Correct.

22 THE COURT: What do I do?

23 MS. MEEHAN: Well, I don't know, I
24 assume that there's video capacity in the jury room,
25 or they can come out and look at it. If they said,

1 well, we'd like to see this again, they come back in,
2 and it's played for them. They may not ask to see it,
3 they may not, but if they were to do so because they
4 didn't see it long enough either in the Government's
5 closing, this benefits the Government as well frankly,
6 Your Honor, because it's more specific as to what's
7 going -- which camera the activity is taking place at
8 what time.

9 MR. ECKERT: I didn't mean to talk out
10 of turn.

11 THE COURT: Go ahead.

12 MR. ECKERT: Yeah, so I think there's
13 two possibilities to do it. The first would be to
14 give them a blind computer that they can play
15 themselves. The second would be to have to assemble
16 them in open court any time they wanted to watch the
17 video. I've seen it both ways. Obviously there's a
18 great deal of video evidence in this case, probably
19 more than your average case.

20 So perhaps if -- I've seen the Court is
21 able to supply them a blank computer, that they are
22 able to put the CD in and play it however they wish.
23 Or they can -- if the Court and counsel prefer they
24 can do it in open court and we would know, you know,
25 which specific portions they wanted played.

1 THE COURT: Well, there's nothing on
2 the video that they can't see.

3 MR. ECKERT: Right.

4 THE COURT: They can see everything.

5 MR. ECKERT: Right.

6 THE COURT: But the question is, and
7 Ms. Meehan still hasn't quite answered it. They're in
8 there and they have this disk and they want to see it.
9 And how do they do it. And the way we've done it in
10 the past really we've always called them back. We
11 don't have a computer facility in the jury room. But
12 that's time consuming. It requires you to get down
13 here and I'm not sure that's the best way to proceed.

14 So I want you to be thinking about that
15 and telling me, Judge, here are our exhibits, that's
16 not the end of it. That doesn't work. We've got to
17 figure out a way to show the exhibits to the jury.
18 And if there's specific requests, I think we have to
19 limit the requests. We have to give them what they
20 want and we can't do that by giving them the disk and
21 the computer.

22 MR. ECKERT: Okay.

23 THE COURT: So I want you to think this
24 through. This issue comes up time after time, and I
25 just want you to be thinking about it in the context

1 of this case.

2 MR. ECKERT: Very well, Your Honor.

3 THE COURT: Okay. Next, paragraph 34
4 which is one of the conspiracy instructions, acts and
5 statements of co-conspirators.

6 I'm looking for it in the page of the
7 charge that you have, it's 42 in my charge. It should
8 be -- no, it's not.

9 (Court confers with clerk)

10 THE COURT: Do you have that charge?
11 Look at the table of contents.

12 MR. ECKERT: Yes, Your Honor.

13 THE COURT: Conspiracy, acts and
14 statements of co-conspirators.

15 MR. ECKERT: I do have that, Your
16 Honor.

17 THE COURT: First, look at the
18 italicized part, the bracketed part. I don't think
19 the first sentence is applicable. Is anything else in
20 that italicized part relevant to this case?

21 MR. ECKERT: I don't believe so, Your
22 Honor.

23 MR. PATTERSON: No, Your Honor.

24 THE COURT: All right. We'll delete
25 that.

1 Is there anything else in that charge,
2 that part of the conspiracy charge to which you
3 object?

4 The Government first.

5 MR. ECKERT: No, Your Honor.

6 MR. PATTERSON: No, Your Honor.

7 MR. WITTELS: No, Your Honor.

8 MS. MEEHAN: Your Honor, I just want to
9 catch up with the Court. You're talking about the
10 entire italicized paragraph acts -- that starts "acts
11 done or statements made"?

12 THE COURT: Yes.

13 MS. MEEHAN: Okay. No objection.

14 THE COURT: To deleting it. All right.
15 I think we'll go over the entire conspiracy charge.

16 MR. WITTELS: Judge, defendants would
17 like to go back, if they may.

18 MR. PATTERSON: That's correct, Your
19 Honor.

20 THE COURT: To what?

21 MR. WITTELS: Defendants do not need to
22 be here for the charging discussion and they'd like to
23 go back.

24 THE COURT: I don't think we're going
25 to discuss anything else. So I have no problem with

1 it if they wish to go back. They can remain or they
2 can go back.

3 MR. PATTERSON: Mr. Smith would prefer
4 to go back.

5 MR. WITTELS: As would Mr. Stevens.

6 THE COURT: Mr. Quinn?

7 MS. MEEHAN: May I have a moment, Your
8 Honor?

9 (Pause)

10 MR. PATTERSON: Irrespective of what
11 the other defendants wish to do, my client does wish
12 to leave.

13 THE COURT: Okay. Well, thank you.
14 Let's wait until we hear from the other defendants.

15 (Pause)

16 MS. MEEHAN: Your Honor, I don't have
17 an answer from Mr. Quinn at the moment, so he might as
18 well just say.

19 THE COURT: You're -- I'm sorry?

20 MS. MEEHAN: I don't have an answer
21 from Mr. Quinn at the moment. He --

22 DEFENDANT QUINN: Your Honor, we having
23 problems again. I don't know what's up, but me and my
24 attorney been having problems since this trial been
25 going on.

1 THE COURT: Well, we'll hear about that
2 later and you may -- certainly may remain. The only
3 issue now is whether you remain to address the -- or
4 just to be present as I rule on the issues presented
5 by the jury charge and some changes that were
6 requested late last night.

7 (Pause)

8 DEFENDANT QUINN: I don't think I've
9 been adequately represented and I feel like I might
10 need to get on the stand.

11 THE COURT: You might need what?

12 DEFENDANT QUINN: I might need to get
13 on the stand to represent myself, because I don't feel
14 like I'm being adequately represented. My attorney is
15 standoffish to me, I'm not having the proper
16 communications with my attorney nor her assistant.

17 THE COURT: Well, we'll talk about
18 that.

19 DEFENDANT QUINN: And I'm hearing
20 chuckles like -- we had -- listen, I wrote you, I
21 wrote the clerk of courts, I expressed that I was
22 having a communication issue with my attorney, we was
23 having a breakdown of communication. She advised me
24 that, no, trust me, I'm going to work and do this,
25 that, and the third, whatever. My co-defendants

1 wanted to come to trial, so I said okay, well, I bit
2 the bullet.

3 But here, we get up here, and as soon
4 as we get up here, even people that's came and sat in
5 the whatever you call it, the stage, the seats or
6 whatever, they even tell me when I'm calling them and
7 this recorder on the phones from the prison saying
8 that, no, your attorney don't like you. You can tell
9 how standoffish she is with me. We having a problem,
10 man. We having a problem. I can't -- I don't want to
11 hear no verdict without letting this be on the record.

12 THE COURT: Well, this was raised some
13 time ago by letters and I directed that Ms. Meehan
14 talk to you and she did and the next time we convened
15 in court there was a status hearing and Ms. Meehan
16 reported that the issues had been resolved. And I
17 asked you whether the issues had been resolved and you
18 said in open court that they had, and I asked you
19 whether you were satisfied with Ms. Meehan as your
20 attorney and you said you were.

21 And that's where the case ended --
22 that's where that issue ended. If you have new
23 issues, we'll hear them. But proceeding pro se is
24 something that requires a fairly lengthy hearing, and
25 it's a little late in the day for that hearing. But

1 that's something we have to explore and that's quite
2 time consuming. And that will throw a wrench in the
3 timing that we -- I had just put on the record.

4 I think what we'll do, we'll proceed as
5 I said we would proceed. We're going to get as much
6 done about the charge. I'm going to hopefully get off
7 the bench and address the difficult -- the more
8 difficult to resolve issues and reconvene, the
9 lawyers, I don't think we need the defendants to try
10 to finish the charge today.

11 And when I -- I'm going to excuse Mr.
12 Smith and Mr. Stevens, they need not stay. Because
13 you wish to stay, Mr. Quinn, you may. At the end of
14 this proceeding, I'll tell you how we have to proceed.
15 I'm going to direct that you and Ms. Meehan talk
16 further on this issue.

17 I can tell you that Ms. Meehan is
18 fighting on your behalf as fiercely as the other
19 defendants. I'm not going to tell you who's fighting
20 more fiercely, it's up to you to figure that out, but
21 she certainly is on her feet objecting as often as
22 anyone else in the courtroom. And the long and short
23 of it, I will give you an opportunity to express your
24 view, but as far as proceeding pro se in this case and
25 giving a closing argument pro se, I think you ought to

1 think twice about that.

2 And, Ms. Meehan, I direct that when we
3 recess, that you will keep Mr. Quinn here and I direct
4 that you talk to him on this issue.

5 MS. MEEHAN: Certainly, Your Honor.

6 THE COURT: If he -- well, I'm not
7 going to go there, but we will have a hearing.
8 There's a colloquy that I must give and I will do that
9 and that's again something we'll have to squeeze into
10 the schedule.

11 Does the Government have any thoughts
12 on this?

13 MR. ECKERT: As far as a pro se
14 colloquy, Your Honor, I would just ask to do that
15 today if we could, but I don't know what the ultimate
16 outcome would be, but given the length of that hearing
17 and with the scheduling, I would just ask that if
18 there's a way to do that today.

19 THE COURT: Well, we're not going to do
20 it on Monday.

21 MR. ECKERT: Right.

22 THE COURT: So we'll have to figure out
23 a way to do it, but I want to get the charge done
24 first.

25 Well, I think what we'll do is address

1 the entire accomplice liability charge. That's not a
2 very long charge with respect to the challenged part,
3 not right now. Give me a chance to read, because you
4 didn't give me a chance to read anything last night,
5 and I think I might have one or two questions
6 regarding your proposal and I want to read the entire
7 Pinkerton charge.

8 Has the Government had any -- I don't
9 want to call them second thoughts, we're up to third,
10 fourth or fifth thoughts about the need for a
11 Pinkerton charge with all the conspiracy instructions
12 that are required?

13 MR. ECKERT: We have not, Your Honor.

14 THE COURT: All right.

15 MS. MEEHAN: Your Honor, may I ask a
16 question. With respect to the accomplice liability
17 charge, would it -- if I were able to ask Mr. Swietzer
18 (ph) to be here to -- because he and Mr. Zalznier (ph)
19 drafted this.

20 THE COURT: You've said that 12 times
21 and the answer is no --

22 MS. MEEHAN: Very well.

23 THE COURT: -- I'm impressed that the
24 defender and the Government are working on a proposed
25 charge, but I can read the law.

1 MS. MEEHAN: Oh, I understand.

2 THE COURT: And the problem with the
3 proposed charge is, it's out of sync with this case.
4 It just doesn't work in the context of this case. And
5 so something has to be done.

6 You say in your agreed upon charge in
7 this case, the Government alleges that Quinn aided and
8 abetted Stevens and Smith in committing the offense of
9 using, carrying, or brandishing a firearm, during and
10 in relation to a crime of violence as charged in the
11 indictment. That statement is wrong. The Government
12 charges that Quinn, Stevens and Smith aided and
13 abetted the commission of the crime of using -- I
14 think they say using in the indictment, using and
15 carrying and maybe and brandishing. But brandishing
16 is not part of the criminal charge. Brandishing is a
17 sentencing issue. It must be presented to the jury in
18 order for the Court to enhance a sentence because of
19 brandishing.

20 Am I correct on that, Mr. Eckert?

21 MR. ECKERT: We agree with the Court.

22 THE COURT: And so this charge is
23 basically not in sync with the case. And it escapes
24 me how the Government can say we agree to it, and in
25 the next breath say, that's not our theory of the

1 case.

2 MS. MEEHAN: It does to me as well,
3 Your Honor. I received this instruction from Mr.
4 Swietzer, who indicated that this was a joint proposal
5 with the exception of a single paragraph on page 2 at
6 the top of the page.

7 THE COURT: I read that paragraph on
8 page 2.

9 MS. MEEHAN: So -- and I cited the
10 Seventh Circuit case, I haven't had an opportunity to
11 read it, U.S. v Armor (ph), but when there's a break I
12 can take a look at that. And that had to do with
13 brandishing. So I wasn't present when these details
14 were ironed out between Mr. Zalzner and Mr. Swietzer,
15 which is why I thought if Mr. Swietzer were available
16 and the Court wanted to hear --

17 THE COURT: No, that's not going to
18 help me at all.

19 MS. MEEHAN: -- further --

20 THE COURT: I'm going to decide --

21 MS. MEEHAN: Understood.

22 THE COURT: -- the case.

23 MS. MEEHAN: Thank you, Your Honor.

24 THE COURT: I want to hear from the
25 Government again, are you charging as this agreed upon

1 instruction reads that Smith and Stevens -- well, let
2 me just look back to you, that Quinn aided and abetted
3 Stevens and Smith in committing the offense?

4 MR. ECKERT: Right. So, Your Honor, I
5 think that we would need to modify the portions of
6 that that would foreclose aiding and abetting
7 liability for Mr. Stevens. I believe Mr. Stevens can
8 be an aider and abettor of Count II for the store gun.

9 So -- and I don't know that -- I wasn't
10 part of the conversation, but I would -- excuse me,
11 think we can modify this to fit with the theory of the
12 case, and not necessarily change the law that's
13 proposed but still be able to incorporate the theory
14 that applies to Mr. Stevens.

15 THE COURT: Well, that's good. Tell me
16 how or do you want to think about it?

17 MR. ECKERT: I would ask for a minute
18 to speak with the folks in my office about that, Your
19 Honor, but I believe it could be done.

20 THE COURT: Well, we're going to try to
21 do that and then reconvene I think this afternoon. I
22 think that's the way to do it. I'm just debating
23 about how much time we need, and at the rate the
24 morning is -- the morning is gone. It's a few minutes
25 of 12.

1 Let's reconvene at 2 o'clock. Lawyers
2 only.

3 MR. PATTERSON: Your Honor, if I just
4 may address an issue. I -- and I understand that
5 request for jury instruction is fluid based upon the
6 evidence and the testimony that we heard, and I
7 believe Your Honor said that we're always going to
8 keep the jury charges open.

9 I had originally under I believe maybe
10 the first charging conference, or maybe the second, I
11 said that I withdraw the defense of duress and
12 justification and I have no comment on the duress
13 charge.

14 I do have a comment on the
15 justification charge. My concern with the elements
16 necessary for that defense would be that my client
17 recklessly placed himself in the position to use of
18 force that was required in the defense of others and
19 himself.

20 The evidence that the jury both saw in
21 the video and heard from at least two witnesses my
22 client's wife was in there, when it was his wife,
23 Joell (ph) and the -- Mr. Sanchez. And that's his
24 testimony from Mr. Sanchez, I believe, just the three
25 of them in the store and Joell has the gun that we now

1 know is loaded at his side.

2 Testimony further revealed that I
3 believe Joell, and I'm sorry about his last name, was
4 going to lock the door, but Mr. Quinn was coming in.
5 So essentially they were going to lock my client's
6 wife inside the story with Joell with a loaded gun,
7 and there's no dispute that this gun is loaded.

8 So -- and that was the reason that I
9 asked to withdraw that, both the duress and
10 justification. But, I mean, I would submit now that
11 the evidence has been heard and its admitted that I
12 believe he has a right to a justification instruction
13 insofar as his wife is concerned.

14 THE COURT: What's the position of the
15 Government?

16 MR. ECKERT: Your Honor, frankly I'm
17 not prepared for this, because I believe that the
18 request for the instruction would be withdrawn. I --
19 we presented the case as if that instruction would not
20 be given. I'd ask for the luncheon recess to review
21 the proposed instructions, as well as the case law on
22 this issue is based on a withdrawal. I have not
23 reviewed it since the time it was submitted.

24 MR. PATTERSON: And again, jury
25 instructions are fluid based on what's going to be

1 presented at trial. And I was having a problem with
2 the reckless element insofar as my client putting
3 himself in this position with respect to Mr. Quinn and
4 Mr. Stevens.

5 I was given all this discovery and
6 obviously beforehand and you're looking at a lot of
7 discovery. But when it was focused specifically on
8 his wife being there, how can you recklessly put
9 yourself in a position that may require you to use
10 deadly force when your wife's in a store with a guy
11 with a gun? And I think the evidence absolutely
12 supports it, so that would be -- and again, I withdrew
13 it because I didn't think it was going to be necessary
14 based upon the timing of me withdrawing it. And now
15 I'm asking for the Court to put that back into the
16 instruction.

17 And I provided in my submission prior
18 to the trial starting the justification charge, with
19 the language that I think would be appropriate,
20 placing Mr. Smith's name in the bracketed area. So
21 there's no bracketed areas on my jury charge for
22 justification.

23 THE COURT: All right. We'll look at
24 that. And we'll reconvene at 2 o'clock. Is there
25 anything else?

1 MR. ECKERT: No, Your Honor.

2 THE COURT: All right. Ms. Meehan, do
3 you wish to remain now and talk to Mr. Quinn in the
4 courtroom, is that what you have in mind?

5 MS. MEEHAN: That seems fine, Your
6 Honor, if Your Honor would permit that.

7 THE COURT: I will. What we'll do with
8 respect to everyone else, I don't think the Government
9 needs to remain. I want all counsel to assemble at 2
10 o'clock in the courtroom. We're going to address the
11 charge, there might be other issues that come up, but
12 I don't think the defendants are necessary.

13 Mr. Patterson?

14 MR. PATTERSON: That's correct, Your
15 Honor. My client would rather just go back for
16 purposes of today.

17 THE COURT: Mr. Wittels?

18 MR. WITTELS: Yes, he'll go back.

19 THE COURT: All right. Then we'll --
20 let me go off the bench now and you remain. Senior
21 Marshal, that doesn't present a problem for you, does
22 it?

23 MS. MEEHAN: I'm happy to see my client
24 in the cell room if it makes it easier for the
25 marshals, Your Honor.

1 THE COURT: Would you rather do it in a
2 cell room?

3 MS. MEEHAN: Yes, that's fine. It's
4 easier for them and that would be fine. Right? Yes.
5 Thank you, Your Honor.

6 THE COURT: All right. You've got to
7 know then --

8 MS. MEEHAN: Very well.

9 THE COURT: -- what your intention is
10 and we'll try to squeeze something in.

11 MS. MEEHAN: Very well, thank you, Your
12 Honor.

13 THE COURT: I don't want to do it on
14 Monday.

15 MS. MEEHAN: Understood.

16 THE COURT: And we're running out of
17 time today. And explain the colloquy that is
18 required.

19 MS. MEEHAN: Your Honor, may I have a
20 moment?

21 (Pause)

22 MS. MEEHAN: Your Honor, I think where
23 the difficulty has been when there's an abrupt
24 decision to be made as to whether they should stay or
25 go and we're talking about things that Mr. Quinn

1 obviously is interested in hearing about, for example,
2 the conspiracy charge, it's difficult for him to make
3 that decision on the fly and he felt pressured by me
4 to answer and so we've ironed that out, and I
5 apologize to Mr. Quinn for rushing that. And I think
6 we're ready to proceed and the Court can colloquy Mr.
7 Quinn now.

8 THE COURT: Well, we're not going to
9 give him a Peppers colloquy now.

10 MS. MEEHAN: No, no, he wants to
11 proceed with the trial with me as his counsel.

12 THE COURT: Is that what you want to
13 do, Mr. Quinn?

14 DEFENDANT QUINN: Yes, Your Honor,
15 you'll hear no more from me.

16 THE COURT: Are you satisfied with Ms.
17 Meehan as your lawyer?

18 DEFENDANT QUINN: As of now, yes.

19 THE COURT: Okay. Fine. Well then,
20 I'm pleased with that decision.

21 All right. With that, we'll recess
22 until 2 o'clock. You may go about your business.

23 (Recessed at 12:01 p.m.; reconvened at 2:21 p.m.)

24 THE COURT: Good afternoon, everyone.

25 MR. ECKERT: Good afternoon, Your

1 Honor.

2 THE COURT: Be seated, please.

3 I think we'll be able to get through
4 this rather quickly. And I think we should start for
5 the record we're conducting what hopefully is the last
6 charging conference in this case and I'm going to make
7 my comments with respect to the January 31st, 2020
8 dated jury charge.

9 I'm going to start with the -- well,
10 I'm going to handle the changes in order, not
11 necessarily in order of importance. Do you all have
12 copies of that January 31st charge?

13 MR. ECKERT: We do, Your Honor.

14 THE COURT: Fine. First, page 11. I
15 think I covered this earlier. I'm going to add the
16 words, and others after defendants in the first line
17 to cover the fact that at least one audio recording is
18 challenged as coming from a defendant. So we added
19 and others.

20 If there's an issue with regard to
21 anything I say, stop me. So we'll make that change on
22 page 11.

23 Page 13 because there were so many
24 guns, this charge on chain of custody I think should
25 be amended after the -- stating the description of the

1 Glock amended to state that this is referred to as
2 "store gun". Any objection to that?

3 MR. ECKERT: I apologize for
4 interrupting, Your Honor, the chain of custody was
5 discussed, but I don't know that it was really ever
6 raised as an issue.

7 MR. PATTERSON: I think I was the only
8 one that mentioned it, one of the witnesses and that
9 was not to raise the issue of defect in the chain of
10 custody, so my position would be on behalf of Mr.
11 Smith that I don't believe that charge would be
12 necessary.

13 THE COURT: All right. We'll take it
14 out.

15 MR. PATTERSON: I'm going to be
16 mentioning chain of custody to get to a certain point
17 in my closing, but it's not to infer that there was a
18 defect in the chain of custody.

19 MR. WITTELS: We don't challenge the
20 chain of custody either.

21 THE COURT: So we'll take this out?

22 MR. WITTELS: Yes.

23 MR. PATTERSON: I believe so.

24 THE COURT: Out. Next with respect to
25 the stipulations I've told you I want stipulations in

1 writing by Monday at 9:30. We're going to change the
2 charge to read, "The Government and the defendants
3 have agreed that certain stipulated facts are true.
4 You should therefore treat those stipulated facts as
5 having been proved. You are not required to do so,
6 however, since you are the sole judges of the facts."

7 That's a slight modification to the
8 Third Circuit charge. Any issues?

9 MR. ECKERT: No, Your Honor.

10 THE COURT: I want you to -- you don't
11 have to respond each time, I want to hear from you,
12 though, if there are any issues, so we'll make those
13 changes.

14 Next page 19, defendant's testimony
15 goes out.

16 Next page 27, Hobbs Act, I think we
17 should change it to Hobbs Act robbery. I didn't put
18 that -- write that in. Hobbs Act robbery element 1.
19 Last paragraph. That charge was written when there
20 was one defendant and one victim and that's not true
21 here.

22 So I decided to insert, you may have --
23 "You may also consider the relationship between Smith,
24 Stevens and Quinn on the one hand, and Joe Ventura and
25 Sanchez on the other hand." I think it makes it clear

1 that we're talking about the two groups, the two
2 victims and the three defendants.

3 Next the accomplice liability charge on
4 page 29 it covers the Hobbs Act robbery. I thought it
5 would be better in the second paragraph, which now
6 reads, "In this case, the Government alleges that
7 Donnie Smith, Abid Stevens and Maurice Quinn aided and
8 abetted someone," and we have in parens "including one
9 of them."

10 I thought it might make more sense
11 there to change one of them to each other, including
12 each other. Any issues. Mr. Eckert?

13 MR. ECKERT: My only concern is that it
14 applies that it would have to be both of them and I
15 think it can be one or the other, Your Honor.

16 THE COURT: Yes. What -- well, first
17 of all, I don't know that I've had an aiding and
18 abetting charge when there are multiple defendants.
19 The Third Circuit instructions were obviously written
20 --

21 MR. ECKERT: Right.

22 THE COURT: -- for a single defendant
23 and it really is almost torturous to try to work this
24 out, but I want this to be as clear as it can be.
25 What do you think we should say there? "Donnie Smith,

1 Abid Stevens and Maurice Quinn aided and abetted
2 someone." Including one another? No.

3 MR. ECKERT: Yeah, I guess, Your Honor,
4 we request including one of them just because that
5 makes it clear that it can be one or it doesn't have
6 to be both I guess is more accurately stated.

7 THE COURT: I'll hear from the
8 defendants. Mr. Patterson?

9 MR. PATTERSON: Your Honor, I'm trying
10 to figure out a response if I can just defer to a
11 colleague.

12 MR. WITTELS: Judge, maybe you want to
13 say at least one of them of the others. That gives
14 the jury the possibility of finding that all three
15 were involved or that two out of three or maybe only
16 one out of three.

17 THE COURT: But they can't aid and abet
18 themselves.

19 MR. WITTELS: No, but they could find
20 that there was no aiding and abetting. But they might
21 find that there was aiding and abetting between two of
22 them, but not three of them.

23 MS. MEEHAN: Or you could just say a
24 co-defendant.

25 MR. ECKERT: That'll be fine, Your

1 Honor.

2 THE COURT: Yeah, there are two
3 responses here.

4 MR. ECKERT: Oh, I'm sorry.

5 THE COURT: What do you think?

6 MR. ECKERT: I think a co-defendant
7 makes sense, but -- really I don't have any objection
8 to either proposal. I think they both --

9 THE COURT: Aided and abetted someone,
10 including a co-defendant.

11 MR. ECKERT: Right. I think that Ms.
12 Meehan's proposal makes sense based on --

13 THE COURT: We seem to have used a
14 little further down before we change that. Take a
15 look at the second element on that same page, page 29.
16 "That Smith, Stevens and Quinn knew that the offense
17 charge was going to be committed or was being
18 committed by someone," and in parens I have "including
19 one of them." Should we change that too including a
20 co-defendant?

21 MR. ECKERT: I would agree.

22 THE COURT: Yeah, we've used including
23 one of them a number of times.

24 MR. ECKERT: I think that's clear to
25 say co-defendant. Not causing anymore work for

1 anyone.

2 MR. WITTELS: That's fine.

3 MR. PATTERSON: That's fine, Your
4 Honor.

5 THE COURT: And its sort of obvious in
6 the third element, "That Smith, Stevens and Quinn
7 knowingly did some act for the purpose of aiding or
8 assisting someone," I think including a co-defendant
9 works better, it was so obvious, we didn't think of it
10 though. And the third -- it appears again in the
11 third element, including a co-defendant.

12 Okay. On the next page, page 30, in
13 the middle of the page or a little closer to the top,
14 "If the evidence shows that Donnie Smith, Abid Stevens
15 and Maurice Quinn" is the way it reads now, I think it
16 reads better if it is or Maurice Quinn "knew that the
17 offense was being committed or was about to be
18 committed." But doesn't that also prove that the
19 Government -- well, let me read the whole thing.

20 "If the evidence shows that Smith,
21 Stevens," and I think it should read or Quinn, "knew
22 that the offense was being committed or was about to
23 be committed, but does not also prove beyond a
24 reasonable doubt that it was Smith, Stevens or Quinn,"
25 not and Quinn, "Quinn's intent of purpose to aid or

1 assist you may not find Smith, Stevens or Quinn guilty
2 of aiding or abetting."

3 I think that works better. And I added
4 at the end of that paragraph. Well, we have another
5 including one of them. "The Government must prove
6 beyond a reasonable doubt that Smith, Stevens and
7 Quinn in some way participated in the offense
8 committed by someone," and I think there it works
9 including a co-defendant. "And something Smith,
10 Stevens and Quinn wished to bring about and to make
11 succeed in order for --" I'm changing this, in order
12 for any of them to be aiders and abettors, to be an
13 aider and abettor.

14 MS. MEEHAN: Your Honor, if I may?

15 THE COURT: Yes.

16 MS. MEEHAN: Just going back to the
17 prior sentence, I'm sorry, it just took a few times to
18 read it. The line, "If the evidence shows that Donnie
19 Smith, Abid Stevens or Maurice Quinn knew," I think
20 that or makes sense and I think the second or makes
21 sense. But the third or in that sentence if it's left
22 as an or, I think it reads that one of them didn't
23 have the intent, you can't find any of them guilty.

24 THE COURT: Let's see. I'll read the
25 whole thing. "If the evidence shows that Smith,

1 Stevens or Quinn knew the offense was being committed
2 or was about to be committed, but does not also prove
3 beyond a reasonable doubt that it was Smith, Stevens
4 or Quinn's intent and purpose to aid or assist or
5 otherwise associate themselves with the offense."

6 "You may not find Smith, Stevens --"
7 you think it should be or?

8 MS. MEEHAN: I don't think it should be
9 or. My suggestion would actually be to remove Donnie
10 Smith, Abid Stevens and Maurice Quinn all three times
11 and say, if you -- if the evidence shows that an
12 individual defendant knew the offense was going to be
13 committed, was about to be committed, but it's not
14 also proved beyond a reasonable doubt, that it was
15 that defendant's intent or purpose to aid, you may not
16 find that defendant guilty of the offense.

17 THE COURT: So you would take out
18 Donnie Smith as --

19 MS. MEEHAN: I would take out the names
20 because I think it implies that you either have to
21 find it's all three or --

22 THE COURT: Well, that's been the
23 problem with the aiding and abetting charge from the
24 get-go. Is there any objection to that suggestion?
25 I'll read it back.

1 "If the evidence shows that any
2 defendant knew that the --" an individual defendant,
3 Ms. Meehan?

4 MS. MEEHAN: Yes, Your Honor. Thank
5 you.

6 THE COURT: If you find that an
7 individual defendant knew that the offense was being
8 committed or was about to be committed, but does not
9 also prove a beyond reasonable doubt that it was, what
10 do you propose there?

11 MS. MEEHAN: That individual
12 defendant's intent.

13 THE COURT: That it was. That can be
14 that defendant's?

15 MS. MEEHAN: Sure.

16 THE COURT: That it was that
17 defendant's intent and purpose to aid or assist or
18 otherwise associate themselves with the offense, you
19 may not find that defendant. That's better. Guilty
20 of the offense as an aider and abettor.

21 Let's read down. The Government must
22 prove beyond a reasonable doubt that Smith, Stevens
23 and Quinn in some way participated in the offense
24 committed by someone, including a co-defendant as
25 something Smith, Stevens and Quinn wished to bring

1 about and to make succeed in order for any of them to
2 be an aider and abettor.

3 MS. MEEHAN: Your Honor, do you see --
4 I think I see the same problem with that sentence.
5 The Government has to prove beyond a reasonable doubt
6 that an individual defendant in some way participated
7 in the offense committed by someone, including a co-
8 defendant as something that defendant wished to bring
9 about and to make succeed.

10 Otherwise, I think it runs the risk of
11 saying that we needed to prove that all three of them.

12 THE COURT: Yeah, well, that's been a
13 problem in order to convert the Third Circuit charge
14 to one that works in this case. The Government must
15 prove beyond a reasonable doubt that an individual
16 defendant, in some way participated in the events
17 committed by someone, including a co-defendant as
18 something that individual defendant wished to bring
19 about and to make it succeed in order for that
20 defendant to be an aider and abettor. Agree?

21 MR. PATTERSON: Yes, Your Honor.

22 MS. MEEHAN: Yes.

23 MR. WITTELS: Yes.

24 THE COURT: Anything else in this
25 charge, this paragraph, this next paragraph?

1 I think it's fine. The next page, 32,
2 at the top of the page we referred to the robbery as
3 robbery, interference with interstate commerce by
4 robbery. Here, I think it makes more sense to talk
5 about robbery which interfered with interstate
6 commerce. And I'm going to explain to the jury the
7 first time I reference it. That I will be referring
8 to the robbery in those ways. A minor change, bottom
9 of this page the word that after the -- before the
10 first element.

11 So it reads "That a conspiracy
12 existed."

13 MS. MEEHAN: Your Honor, you said to
14 stop you when you were on one of the instructions.

15 THE COURT: Yes.

16 MS. MEEHAN: I would have a general, I
17 think on behalf of all three defendants an objection
18 to the Pinkerton charge. While we acknowledge that
19 the Court has the authority when a conspiracy is not
20 charged to instruct the jury under Pinkerton, Your
21 Honor has broad discretion and the reason Your Honor
22 has broad discretion is because the facts of every
23 case are different.

24 To modify or not give the Pinkerton
25 instruction, because they -- to make sure that the

1 jury's not confused and if the other instructions
2 adequately and fairly cover the issues in the case,
3 and I didn't find a case, Your Honor, where it was
4 specifically oh, this evidence was too weak for the
5 Court to instruct under the Pinkerton theory. But the
6 general premise that if it's overly confusing and the
7 Court decides in its broad discretion that its less
8 confusing without the Pinkerton instruction, the Court
9 does have authority to do so.

10 THE COURT: Let me see that case.

11 MS. MEEHAN: Okay. Well, the general
12 premise is the Maury case, 690 -- it's U.S. v Maury,
13 and basically the holding is a trial judge retains
14 broad discretion in this regard as long as the Court's
15 instructions fairly and accurately -- adequately,
16 pardon me, submit the issues in the case to the jury
17 and it cites some other case. And that cite is --
18 it's M-A-U-R-Y, 695 F3d 227 and it's Third Circuit
19 2012.

20 And the third -- there's Third Circuit
21 law, Your Honor, that a jury instruction must be
22 structured in a way, and this is really critical I
23 think in this case, Your Honor, because Your Honor
24 said yesterday this seems spontaneous or words to this
25 effect, and we've all -- and I think Your Honor's

1 instinct about the Pinkerton and then the many, many
2 instructions on conspiracy, Your Honor's initial
3 instinct before any really evidence was fully put
4 before the jury is it's really very confusing in this
5 case because the Government has various theories of
6 liability, whether it's the store gun or whether it's
7 the money from the register. There's the three
8 defendants. So Your Honor has the discretion to make
9 the determination that the aiding and abetting, the
10 accomplice liability charge is sufficient to put the
11 issues before the jury and forego giving the Pinkerton
12 charge.

13 So -- and that proposition is U.S. v
14 Johnston -- oh, I'm sorry. Your Honor, and I'm going
15 to cite to the John Stone case, J-O-H-N, S-T-O-N-E,
16 107 F3d 200 and that's a Third Circuit 1997. "A jury
17 charge must clearly articulate the relevant legal
18 standards," and then there's an example in U.S. v
19 Schneider, "it must therefore be structured in such a
20 way," and this is really important, "so as to avoid
21 confusing," and that's the key word I would say "or
22 misleading the jury."

23 And I really think, Your Honor, with
24 the numerous conspiracy instructions they will have
25 many, many questions about the jury instructions. So

1 if it is overly confusing and misleading, the Court
2 can make the determination today that it's really not
3 necessary and it might just be overly confusing for
4 this jury. I have a general objection on behalf of
5 the three of us.

6 THE COURT: Mr. Wittels?

7 MR. WITTELS: I agree with that, Judge.
8 And I think we have to go by instinct here about
9 making things too confusing for the jury.

10 I appreciate the Government wants an
11 alternative theory and prosecution, but if it comes at
12 the cost of completely muddying the waters, then we've
13 lost more than we gained, even from the Government's
14 perspective.

15 THE COURT: Mr. Patterson?

16 MR. PATTERSON: Judge, I would just
17 concur with the statements just made. And again, I
18 think the ultimate issue is confusion. I mean, based
19 upon the evidence that's presented in this charge,
20 it's extremely confusing to the jury and unnecessary.

21 THE COURT: Well, I share the thought
22 that the Pinkerton charge in this case is a bit
23 confusing. But confusing is not a ground for
24 excluding a charge if the charge is warranted under
25 the evidence. So we have to look to the evidence and

1 look to what the Government's position is.

2 I prefer to charge this case, submit it
3 to the jury without Pinkerton because I think it
4 complicates the case. And any charge this long is
5 complicated. I've had this issue before, I've
6 persuaded at least one AUSA not to proceed on
7 Pinkerton, and my recollection is because I had so
8 very few acquittals that that case resulted in a
9 conviction. I don't know whether an aider and abettor
10 was a single defendant or as the principal.

11 But I'm concerned and, Ms. Meehan, I'm
12 going to turn to Mr. Eckert in a moment, but I'm
13 concerned that he's articulated in a very sketchy way
14 the basis for the conspiracy charge. Is it strong and
15 does it jump out at you, is it the first thing you
16 think of when you hear those facts? And the answer to
17 all of those questions is no, but is it possible that
18 a conspiracy was formed as Mr. Eckert argues? I'll
19 let him answer that question.

20 MS. MEEHAN: Your Honor, may I just add
21 one thing. Your Honor used the word warranted. And
22 maybe you could say, well, is it warranted, in a broad
23 sense it could be warranted, it could be warranted in
24 most cases, which is why Your Honor has the last say
25 in this, whether -- with all the evidence that Your

1 Honor sat through for these three days, whether it's
2 really the right instruction for the jury under this
3 set of facts, so as not to be overly confusing for
4 them. And really that's what I think, the fact that
5 Your Honor has the discretion because it's Your
6 Honor's determination, looking at the evidence.

7 Whether it's warranted, with
8 practically very little evidence it could be
9 warranted, but that's when it's most confusing for the
10 jury I would argue. And that's what Your Honor has
11 pinpointed throughout this case.

12 So I think -- I guess we would be
13 asking the Court to utilize its discretion and forego
14 the Pinkerton and the rest of the conspiracy
15 instruction.

16 MR. ECKERT: So I would just first I
17 guess respond as a matter of facts, Your Honor. I
18 believe the evidence of Mr. Stevens observing the
19 argument between -- I hesitate to use the term
20 argument, but hearing the dialogue between Mr. Ventura
21 and the victim, and Mr. Quinn would certainly go his
22 intent.

23 The fact that --

24 THE COURT: Now, wait a minute we're
25 talking about a conspiracy now, an intent to do what?

1 MR. ECKERT: Well, right. So that when
2 Stevens leaves the store and then comes back, clearly
3 there's been something formed. The fact that all of
4 them are outside the store at a particular point would
5 be enough evidence that they formed an agreement
6 outside which you can infer, based on the fact that
7 when Smith and Stevens enter the store, they both
8 immediately draw their weapons.

9 That does -- I mean, that has to happen
10 for some kind of reason. I agree it's not the first
11 part of our closing, but it certainly is justified
12 under these facts.

13 I would just in looking at the comment
14 to the model instructions, the Third Circuit has
15 sometimes said that there are three exceptions to the
16 Pinkerton rule, that the substantive offense was not
17 within the scope of the unlawful project.

18 Here, clearly that's the entire purpose
19 of them going in the store. All three of those
20 gentlemen when they went back in the store was with a
21 singular purpose in mind, which was to get money from
22 Mr. Quinn.

23 The second, the offense was not
24 committed in furtherance of the conspiracy. Here,
25 absolutely it was, the robbery was to benefit Mr.

1 Quinn as discussed, and then third, that the offense
2 was not reasonably foreseeable to defendants, which is
3 to the defendant, which is belied by the fact that
4 they immediately go in the store, draw their weapons
5 and advance in a group advancing and cornering the
6 victim in the back of the store.

7 So we would submit to the Court, those
8 exceptions don't apply. And while again it's not the
9 primary theory of liability, there's certainly enough
10 evidence to submit it to the jury for the reasons
11 previously stated.

12 THE COURT: Even with the aiding and
13 abetting charge?

14 MR. ECKERT: Yes, Your Honor, because
15 the aiding and abetting it's a separate theory of
16 liability.

17 THE COURT: Well, they're absolutely
18 separate theories of liability. And what are you
19 saying, there are three ways of proving this crime.

20 MR. ECKERT: Correct.

21 THE COURT: Well, under the evidence
22 presented, although I wish I could rule otherwise, my
23 view is that there's just enough to warrant submitting
24 this theory to the jury. So we will.

25 MS. MEEHAN: Just note our continued

1 objection and we'll object at the appropriate time.

2 THE COURT: Oh, again, let me tell you,
3 so that you know, objections to the charge cannot be
4 preserved, will not be preserved by objecting during
5 the charging conference.

6 MS. MEEHAN: Very well.

7 THE COURT: I get the impression that
8 you don't like the Pinkerton charge. Neither do I.
9 But we're not -- I'm not excluding it.

10 Now what you have to do, after the
11 charge is given, when we go to sidebar, I'll ask the
12 question, any objections to the charge, anything else
13 you wish me to charge and then put your objection --

14 MS. MEEHAN: Very well, thank you, Your
15 Honor.

16 THE COURT: -- on the record.

17 I'm at the bottom of page 32. I'm
18 going to insert a that, but the second element "That
19 while Donnie Smith, Stevens, and Quinn were still
20 members of the conspiracy" we say one or more members
21 of the conspiracy including one of them makes no
22 sense. In the context of this case, I think we should
23 say one of them committed the offense. There's no
24 issue that anyone else was involved in the conspiracy.

25 And the next page, this is taken right

1 from the conspiracy charge which I really didn't read
2 that carefully. I did last night and this morning,
3 however.

4 Third element, that the other members
5 of the conspiracy makes no sense. So we'll change
6 that to that Smith, Stevens or Quinn. And there's
7 only one objective, so we'll take objective out.

8 Those are my only comments there. The
9 next page, entitled these are the elements, elements
10 of conspiracy. Some modifications. First, the first
11 element, "That one or more persons agreed to commit an
12 offense against the United States as charged." I'm
13 going to add in Count I of the indictment.

14 The third element, "That Donnie Smith,
15 Stevens and Quinn joined the agreement or conspiracy
16 knowing its objective to commit an offense against the
17 United States and intending to join together with at
18 least one other alleged conspirator."

19 With at least one other alleged
20 conspirator makes no sense. It's in the Third Circuit
21 instructions, which were directed to a single
22 defendant case. And a little further down we'll take
23 out "and at least one other alleged conspirator." The
24 three conspirators could only be Smith, Stevens and
25 Quinn, so I'm going to make those changes, delete

1 those identical phrases where they appear in the third
2 element.

3 Next I have nothing to change about the
4 existence of an agreement, the first element. On
5 membership in the agreement, which is page 36 of your
6 copy of the charge, I'm going to take out all of the
7 S's. It seems there's only a goal or an objective.
8 So we'll make those references singular on page 36.

9 Page 37 same thing. It will be -- it
10 will read objective singular goals singular.

11 And -- all right. Page 39 singular,
12 objective will be a singular. And the second sentence
13 of the second paragraph makes no sense. It reads,
14 "Also, the Government does not have to prove that
15 Smith, Stevens or Quinn personally committed any of
16 the overt acts." That's a proper instruction where
17 there's a single defendant and other members of the
18 conspiracy. So we'll delete that.

19 Page 40, success immaterial. That's
20 fine. Conspiracy duration, page 41. Is it necessary
21 to include that charge?

22 MR. ECKERT: I don't think so on these
23 facts, Your Honor.

24 THE COURT: We'll take that out. The
25 charge on page 42, acts and statements of co-

1 conspirator. Is it all right except for the
2 italicized and bracketed portion, we'll take that out.

3 Next Count II --

4 MS. MEEHAN: So, Your Honor, just for
5 the record, the defense on all three -- on behalf of
6 all three defendants object to any conspiracy charge
7 27, 28, 29, 30, 31, 32, Your Honor omitted 33 --

8 THE COURT: Why are you doing this?
9 Why are you doing this now? You've already told me
10 you're going to object.

11 MS. MEEHAN: That's fine, okay.

12 THE COURT: I've already told you --

13 MS. MEEHAN: Very well.

14 THE COURT: -- that objecting now does
15 not constitute an objection on the record. You've
16 told me that you disagree with the conspiracy charge.
17 We've discussed that, we've addressed that at length.

18 MS. MEEHAN: Okay.

19 THE COURT: I told you what my view is.
20 My view is that the case would be better tried and it
21 would less chance of error and an increased change
22 that the jury would understand the facts a little
23 quicker and there would be less -- just less
24 possibility of confusion without it. But I think the
25 Government has pointed to some facts which give rise

1 to the need that if requested the Pinkerton and
2 conspiracy charges should be given. And that's why
3 I'm there. But you're not accomplishing anything
4 except spending time when you object to something I've
5 told you you must object to at the end of the charge.

6 MS. MEEHAN: Understood. I just wanted
7 to put the numbers of Your Honor's charge on the
8 record.

9 THE COURT: It's very simple. It's all
10 of the charges dealing with Pinkerton and conspiracy.

11 MS. MEEHAN: Understood.

12 THE COURT: Next Count II, the using,
13 carrying -- using or carrying a firearm and for the
14 record that's the element. The crime as set forth in
15 the statute 924(c) reads, using and carrying. It can
16 be established by proving using or carrying.

17 The first change I wanted to make was
18 the first element, to take out the and and put in an
19 or. The first element now reads that Smith, Stevens
20 and Quinn committed the crime of Hobbs Act robbery as
21 charged in Count I of the indictment. They don't all
22 three have to commit that crime with respect to this
23 crime. That crime, the crime charged in Count I can
24 be committed by any of them.

25 So we'll change the and to an or in the

1 first element. Now, Ms. Martin, you're standing and
2 you obviously have something to say.

3 MS. MARTIN: Your Honor, if I may, I
4 saw your change to the or and I started looking at all
5 of the ands. I think that everything below the first
6 paragraph we could use -- we could replace Donnie
7 Smith, Abid Stevens and/or Maurice Quinn with
8 individual defendant again. Because otherwise we have
9 the same problem with the ands that exist in the
10 second element and the third element, and the final --
11 the second to last paragraph.

12 THE COURT: Second, that during and in
13 relation to the commission of that crime, the robbery
14 an individual defendant used or carried. What's wrong
15 there with Smith, Stevens and Quinn? You think that
16 requires proof that all three carried?

17 MS. MARTIN: I do, Your Honor. So I
18 originally started changing them to ors and in the
19 abundance of a caution, I wouldn't want a juror to
20 look at those and think that we have to prove that all
21 three of them used or carried.

22 THE COURT: All right. Any objection
23 to that from any of the defendants?

24 MR. WITTELS: No.

25 MR. PATTERSON: No, Your Honor.

1 THE COURT: Let's see how it will --
2 we'll read through right now the first one makes
3 sense. An individual defendant knowing used or
4 carried the firearm. And then it goes on to explain
5 use or carry.

6 The third element that an individual
7 defendant used or carried. That makes sense. No
8 issue.

9 Page 44, the top, "In determining
10 whether Smith, Stevens and Quinn," does the Government
11 oppose substituting it there? I don't think it's
12 necessary there.

13 MS. MARTIN: I would just change the
14 and to an or, Your Honor.

15 THE COURT: A little further down.

16 MS. MARTIN: The same thing. That how
17 close Donnie Smith, Abid Stevens or Maurice Quinn
18 were.

19 THE COURT: Last paragraph. And or or,
20 or individual defendant?

21 MS. MARTIN: I wonder if it just makes
22 sense to use individual defendant, drop the entire
23 thing to make it consistent, so you don't have a juror
24 wondering why we've named the defendants in certain
25 portions of the charge instead individual defendant in

1 the others.

2 THE COURT: Oh, I don't think they're
3 going to be thinking that but does it work for
4 everything?

5 MS. MARTIN: I believe it does.

6 THE COURT: You want to change Smith,
7 Steven and Quinn to an individual defendant each time
8 including in the first element?

9 MS. MARTIN: I think that that actually
10 makes sense. First element naming them and the or, to
11 -- it could be individual defendant but that one seems
12 fine to me.

13 THE COURT: All right. Is there any
14 objection to what Ms. Martin proposed? I think it
15 might make it a little more clearer. So everywhere
16 else we'll change it to an individual defendant.

17 All right. 45 no issues. And this is
18 the charge that I think is the one to which -- as to
19 which there are the most objections. First my overall
20 comment, the major difference between what was
21 proposed seemingly as a joint proposal, and what we
22 presented fell into two categories.

23 First, there's the reference in which
24 the Government is presenting the case and Mr. Eckert
25 has said he's not presenting the case in the way that

1 it is presented in the proposed charge. He's not --
2 well, committed to the course that it was Quinn who
3 aided and abetting Stevens and Smith in using or
4 carrying. That's the one difference.

5 The second difference relates to given
6 an opportunity to withdraw. Now, there's some
7 language that has to be tweaked and we'll go over it.
8 But I picked one sentence from the proposed charge and
9 proposed to add it to page, it's 47.

10 First paragraph in the middle. I'll
11 read what we have and what I propose adding and then
12 we'll go back over the entire charge to tweak it the
13 way we've tweaked the other aiding and abetting
14 charge.

15 And I'm quoting from the middle of the
16 first paragraph on page 47. "To find that Smith,
17 Stevens and Quinn had advanced knowledge that one of
18 the principals would use or carry a firearm during and
19 in relation to the interference with interstate
20 commerce robbery, you must find that the Government
21 proved that Smith, Stevens and Quinn had knowledge of
22 the firearm at a time when they could do something
23 with that knowledge, such as walking away from the
24 criminal venture."

25 And I propose adding a sentence there.

1 Advanced knowledge beforehand such that Smith, Stevens
2 and Quinn had a realistic opportunity to leave the
3 scene of the robbery after learning that a firearm --
4 no. Advanced knowledge means knowledge beforehand,
5 such that Smith, Stevens or Quinn had a realistic
6 opportunity to leave the scene of the robbery after
7 learning that a firearm would be used or carried.

8 That is really the essence of the
9 heated argument and how it got heated escapes me that
10 was presented yesterday. I don't agree with the
11 charge that was presented supposedly by agreement of
12 the Government and the defense. It's not necessary in
13 this case.

14 The things that Ms. Meehan presented
15 can be raised and can be argued and articulated in any
16 reasonable way in argument. The instruction is clear,
17 advance knowledge means and sufficient time to enable
18 a defendant to walk away and that's the basic -- well,
19 it's not even a basic difference. It's a little more
20 expansive in this joint submission, but the joint
21 submission doesn't read like a jury charge and I guess
22 that's because it was drafted by two attorneys. Even
23 though they're two attorneys who are well known to me
24 and who are just excellent, the two chiefs of appeals.

25 Now, that's the way I propose to argue

1 -- to respond to the arguments that have been raised.

2 MS. MEEHAN: Your Honor, with respect -

3 -

4 THE COURT: On that issue, on that
5 issue is there any objection? Is there anything else
6 you wish to say?

7 MS. MEEHAN: Well, I do think, Your
8 Honor, if you said quit the robbery rather than leave
9 the scene as was proposed by the two attorneys you
10 just referenced is --

11 THE COURT: Quit the robbery is
12 something -- it's a phrase I've never used before. I
13 took that out. Does the Government think that's a
14 more clear way of expressing this, and isn't leaving
15 the scene the easier thing to prove?

16 MR. ECKERT: No, right, I mean, I think
17 they're similar but leaving the scene here is -- I
18 think they're both accurate. They mean the same
19 thing, to walk away, to walk out of the store.

20 THE COURT: Well, I don't usually --

21 MR. ECKERT: No, I'm not suggesting
22 that we charge that specifically, I don't mean to
23 suggest that. But, no, I think the way the Court
24 phrased it is fine.

25 THE COURT: Leave the scene of the

1 robbery is the way I put it. This is an issue that
2 really impacts the defendants and I want to be sure
3 that we convey it, but I thought this conveyed it a
4 little more clearly than quits the robbery. That's a
5 phrase that I'm not sure all jurors would understand.

6 And however I phrase it, the defendants
7 will be able to argue on that issue. You don't have
8 to use my language. If you want to use the language
9 quits the robbery in your argument you may. I thought
10 this was more clear.

11 MS. MEEHAN: That's fine, Your Honor.
12 I mean, we --

13 THE COURT: We're going back over this
14 charge, minor changes though.

15 MS. MEEHAN: Right.

16 THE COURT: On page 46, second
17 paragraph, "The Government alleges that Smith, Stevens
18 and Quinn aided and abetted someone including --" and
19 we wondered whether that should be changed to instead
20 of one of them including each other. We made that
21 change on page 29. I think we should do the same
22 thing there.

23 Down to the third element "That Smith,
24 Stevens and Quinn were active participants in a
25 robbery that interfered with interstate commerce." In

1 -- oh, I read it wrong. "That Smith, Stevens and
2 Quinn were active participants in using and carrying a
3 firearm during a robbery that interfered with
4 interstate commerce and also had advanced knowledge
5 that one of the principals would use a firearm during
6 and in relation to that robbery."

7 Do you want me to read that again? Can
8 you read my handwriting?

9 MS. MARTIN: I think so, Your Honor.

10 THE COURT: It reads that "Smith,
11 Stevens and Quinn were active participants in using
12 and carrying a firearm --" should that be or, "using
13 or carrying a firearm during a robbery that interfered
14 with interstate commerce and also had advanced
15 knowledge that one of the principals would use a
16 firearm during and in relation to that robbery." I
17 think that works.

18 In the top -- at the top of the page,
19 "To find that Smith, Stevens and Quinn were active
20 participants in using and carrying a firearm during
21 and in relation to a crime of violence, you must find
22 --" I think that more clearly states what we have
23 there. And the paragraph I'm going to add or the
24 sentence I'm going to add goes at the end of that
25 first full paragraph.

1 About the end, minor changes. I'm
2 going to include -- well, before I rule, Mr. Patterson
3 asked for a charge on justification. What's the
4 Government's position? Is the Government in agreement
5 under the evidence?

6 MR. ECKERT: I think it makes sense,
7 Your Honor.

8 THE COURT: I do too. So you don't
9 have to argue. And we're going to use the charge from
10 the Third Circuit pattern or model instructions. I'm
11 not sure, I didn't read yours word-for-word and
12 compare it, I read your charge. We're going to give
13 Third Circuit charge tailored to this case on
14 justification.

15 MR. PATTERSON: I believe I just added
16 on -- I used the Third Circuit and just filled in the
17 blanks, but I did put charges in Counts I, II and III.
18 I would remove Count III and to --

19 THE COURT: Okay. Yes, you pointed
20 that out.

21 (Court confers with clerk)

22 THE COURT: The -- Ryan has suggested
23 that we tailor the second aiding and abetting charge
24 in referring to individual defendants to what we
25 decided on Count I, the aiding and abetting charge.

1 And I'm getting a nod from the Government. We'll do
2 that.

3 MS. MARTIN: Yes, Your Honor, I
4 absolutely agree with Ryan and I was also -- when the
5 Court's finished I just wanted to revisit that first
6 aiding and abetting instruction for that same reason.

7 THE COURT: Well, we're going to do it.
8 Are the changes the same or?

9 MS. MARTIN: So --

10 THE COURT: Well, let's finish --

11 MS. MARTIN: We'll, let's finish.

12 THE COURT: -- and then we'll go back.

13 MS. MARTIN: I apologize.

14 THE COURT: On deliberations. It's
15 amazing what happens when you read something really
16 carefully. I found one or two, well, not very many.
17 Page 52, "If you want to see any of the exhibits that
18 were admitted in evidence," I'm going to add the
19 phrase, and not provided to you, "you may send me a
20 message." I think there's only one, I think it's the
21 gun. And the verdict form, I'm going to make
22 reference to three verdict forms and I think that's
23 all I have.

24 Now, let's go back to Count I the
25 aiding and abetting charge and I think we're just

1 about finished.

2 MR. WITTELS: Judge, before we leave
3 the exhibit instruction, can we resolve the videos,
4 including the one, give them a computer to look at the
5 video or if they have to come back in the courtroom
6 asking them about a request. In discussing it, we all
7 thought it would be best for the jury if they could
8 look at the videos in the jury room. That way they'd
9 be able to discuss among themselves the video, the
10 evidence if they wanted to.

11 (Court confers with clerk)

12 THE COURT: We're going to ask Milan
13 Hull (ph) to come in.

14 MR. WITTELS: Okay.

15 THE COURT: That's a good idea. Well,
16 certainly there's more video evidence in this case
17 than in most. And I think it'll slow things down. If
18 they want to see something, we've got to get everyone
19 together and provide them with the video.

20 MR. WITTELS: Yeah, and then --

21 THE COURT: And replay in the
22 courtroom.

23 MR. WITTELS: Yeah, and then they have
24 to go back in the jury room to discuss it and it could
25 go into deliberations all next week.

1 THE COURT: No. No. That won't
2 happen. I hope your prediction is wrong. Well, while
3 we're waiting on that, Ms. Martin --

4 MS. MARTIN: Yes, Your Honor.

5 THE COURT: -- what page?

6 MS. MARTIN: Page 29. We made all of
7 those changes using individual defendant on page 30
8 and then when I went back and reread it, my suggestion
9 would be to use individual defendant, goes beyond page
10 29 starting with the second element where it names
11 each of the defendants. I would just change each of
12 the defendant's name to an individual defendant or the
13 individual defendant through the remainder of the
14 charge.

15 THE COURT: Ms. Hull, we're concerned
16 about the way in which the jury will be able to view
17 the video footage presented during the trial. And I
18 think we need Ed Morris, unless you know the answer.
19 We'd like a computer up here.

20 MS. HULL: I do not know the answer. I
21 have reached out to Ed and his team and I haven't
22 heard back from him.

23 THE COURT: You've done it today?

24 MS. HULL: Yes, yes, yes.

25 THE COURT: Because he was here at the

1 drop of a hat yesterday when we were concerned with
2 how Mr. Smith was going to participate in the trial if
3 he refused to come to the courtroom. We were already
4 in the process of hooking up a television
5 communication system in the cell block.

6 Well, let's follow-up with Mr. Morris.
7 I won't keep everyone. If he calls back before we
8 adjourn tonight, then let us know. Otherwise, try to
9 get an answer. We have lots of TV footage and we
10 think the jury will want to see it. We've practically
11 predicted that they will.

12 MS. HULL: Right.

13 THE COURT: And we'd like a computer in
14 there. They may need someone to explain how it works.
15 But he can do that. Will you take care of that?

16 MS. HULL: Yeah. I vaguely recall this
17 morning in another case, I just (indiscernible).

18 THE COURT: I don't remember. But
19 you'll get back to us. We'd like to have this
20 resolved. Well, we don't really have to have it
21 resolved, first thing Monday morning, but we have to
22 have it resolved by the time the jury begins
23 deliberations. That was a good point.

24 All right. Let's go back to page 29.
25 Ms. Martin.

1 MS. MARTIN: Yes, Your Honor. At page
2 29 starting with the second element where it means the
3 --

4 THE COURT: What about in the beginning
5 in this case?

6 MS. MARTIN: I think that it's okay
7 because that was alleged in the elements or in the
8 indictment as aiding and abetting for each of the
9 defendants, so it names them, which they obviously
10 know their names. But then when you're talking about
11 the actual elements it makes it clear that it applies
12 to one person at a time.

13 THE COURT: All right. So the first
14 element should be that someone --

15 MS. MARTIN: Correct.

16 THE COURT: -- and you want to add
17 including an individual defendant?

18 MS. MARTIN: No, Your Honor, starting
19 with the second element where we have Donnie Smith,
20 Abid Stevens and Maurice Quinn, changed that and every
21 subsequent reference to all three of them to an
22 individual defendant or the individual defendant
23 depending on the sentence.

24 THE COURT: Well, second element should
25 be that an individual defendant. Third element, that

1 an individual defendant. Knowingly did some act for
2 the purpose of aiding or assisting someone. And we
3 have including the co-defendant. That works. Both
4 times, co-defendant? Yes.

5 Third element -- you can't fool Ms.
6 Hull.

7 MS. HULL: I bruised my knee.

8 THE COURT: Ms. Martin, are you -- I
9 asked you whether we had to change a co-defendant to
10 an individual defendant as it appears in the rest of
11 the third element.

12 MS. MARTIN: For the second and third
13 lines?

14 THE COURT: Yes.

15 MS. MARTIN: I think a co-defendant as
16 we changed it earlier still makes sense.

17 THE COURT: All right. And in the
18 fourth element?

19 MS. MARTIN: The fourth element I would
20 change that to the individual defendant.

21 THE COURT: That the?

22 MS. MARTIN: To make it clear that
23 you're still referring to the same person or if the
24 Court prefers an individual defendant.

25 THE COURT: All right. Let's read the

1 third element. "That an individual defendant
2 knowingly did some act for the purpose of aiding or
3 assisting someone, including a co-defendant in
4 committing the specific events charged with the
5 offense that someone, including a co-defendant commit
6 that specific offense."

7 Does that work?

8 MS. MARTIN: I think it does, Your
9 Honor.

10 THE COURT: And then finally the fourth
11 element. "That Smith, Stevens and Quinn performed an
12 act in furtherance of the offense charged."

13 MS. MARTIN: And I would change that to
14 an individual.

15 THE COURT: An individual. Well, it
16 can be more than one individual defendant.

17 MS. MARTIN: Well, we're referring to
18 the same person, correct, so it would be that the
19 individual defendant performed an act in furtherance
20 of the offense charged because you're referring to the
21 aider and abettor.

22 THE COURT: Yes. You see the problem,
23 this charge was designed initially Third Circuit model
24 instructions for a single defendant. What happens if
25 more than someone is in the guise of the jury guilty

1 of committing the offense. This is using -- no, we're
2 back to of that robbery.

3 MS. MARTIN: Your Honor, that's why my
4 suggestion was to leave that the Government alleges in
5 that second paragraph Donnie Smith, Abid Stevens and
6 Maurice Quinn aided and abetted --

7 THE COURT: Okay.

8 MS. MARTIN: -- so that they know that
9 it's charged as to all three.

10 THE COURT: Okay. Would it better to
11 just say here that a defendant, looking at the second
12 element, that a defendant or that defendant knew that
13 the offense charged was going to be committed?

14 MS. MARTIN: That makes sense to me,
15 Your Honor.

16 THE COURT: So that's that --

17 MS. MARTIN: A defendant?

18 THE COURT: Yes. That a defendant knew
19 that the offense was going to be committed.

20 MS. MARTIN: I think the only issue
21 with that, Your Honor, would be that it's not clear
22 that it has to be the same person --

23 THE COURT: No.

24 MS. MARTIN: -- for the second, third
25 and fourth elements.

1 THE COURT: You're right.

2 Well maybe we should change the
3 paragraph that reads in order to find Smith, Stevens.
4 Well we used a disjunctive, or Quinn.

5 MS. MARTIN: Yes.

6 THE COURT: I was thinking maybe we
7 should change that to that a defendant. We've
8 referred to Smith, Stevens and Quinn in the preceding
9 paragraph.

10 MS. MARTIN: I think that would work.

11 THE COURT: In order to find one of
12 them because you refer to them by name in the
13 preceding sentence. Guilty of Hobbs Act robbery
14 because they -- because he aided and abetted someone.
15 Maybe that should read a co-defendant.

16 Let's read this whole second paragraph.
17 "In this case, the Government alleges that Smith,
18 Stevens and Quinn aided and abetted someone, including
19 a co-defendant, in committing the act of Hobbs Act
20 robbery as charged. In order to find -- maybe we
21 should take out Smith, Stevens or Quinn, in order to
22 find a defendant guilty of Hobbs Act robbery because
23 they aided and abetted someone in committing the
24 offense, you must find the Government proved. Maybe
25 we should just say that the defendant committed the

1 offense, that a defendant, that someone, including one
2 of the defendants committed the offense.

3 And then in the next paragraph, that
4 the defendant knew that the offense charged was going
5 to be committed. The third element that the defendant
6 knowingly did some act.

7 MS. MARTIN: Your Honor, I'm about
8 three-fourths of the way through the rest of the
9 instruction. I think that that works.

10 THE COURT: Well, what we'll do, I
11 think we'll be able to finish this tonight. We're
12 going to get a copy of the charge to you over the
13 weekend, to everyone, and if there are any comments on
14 this we can certainly pick them up -- pick up on them
15 on Monday. So let's go back.

16 In order to find, instead of Smith,
17 Stevens or Quinn, a defendant, guilty of Hobbs Act
18 robbery, and then the first element, that someone
19 including one of the defendants. And I think this
20 should read that the defendant knew that the offense
21 charged was going to be committed or was about to be
22 committed by someone.

23 Now, were we including the co-
24 defendant. Third, that the defendant knowing he did
25 some act for the purpose of aiding or abetting, or

1 assisting someone, including a co-defendant, that
2 works there, in committing the offense charged, and
3 with the intent that someone including a co-defendant
4 commit the specific offense charge.

5 And then I guess -- I think we should
6 go back to the defendant again. Now, this works. Do
7 we have to change anything else?

8 MS. MARTIN: Your Honor, it appears to
9 me that we would change it to the defendant for the
10 rest of the instruction unless that's what you meant.

11 THE COURT: Starting where?

12 MS. MARTIN: On page 30.

13 THE COURT: Yes.

14 MS. MARTIN: Starting whether.

15 THE COURT: Change it to a defendant?

16 MS. MARTIN: The defendant.

17 THE COURT: Had the required knowledge,
18 et cetera. You may consider both direct and
19 circumstantial evidence including. I think this
20 should be the defendants.

21 MS. MARTIN: I agree.

22 THE COURT: However, evidence that -- I
23 guess it should be the defendant here too. And again
24 to find the defendant. And here too, "If the evidence
25 shows that the defendant knew offenses being committed

1 was about to be committed but does not also prove
2 beyond a reasonable doubt that it was that defendant's
3 intent and purpose to aid or assist or otherwise
4 associate themselves you may not find that defendant."
5 That works. "Guilty of the offense as an aider and
6 abettor. The Government must prove beyond a
7 reasonable doubt that --" should be the defendant, "in
8 some way participated in the offense committed by
9 someone, including a co-defendant as something that
10 the defendant wished to bring about to make succeed in
11 order for that defendant to be an aider or abettor."
12 I think that works. What about the last paragraph?

13 MS. MARTIN: I think the defendant
14 works for all of those as well. Or in the third
15 reference to the defendants and may be set forth.

16 THE COURT: To show that the defendant
17 performed an act shows affirmative participation by
18 the defendant. Which at least encouraged someone
19 including a co-defendant I think. To commit the
20 offense, that is you must find that the defendant
21 acted in some way, aid or assist someone including a
22 co-defendant to commit the offense. And the
23 defendants act need not further assist every part.

24 And on the top of page 33, one, the
25 defendants. We've massacred this charge. I think

1 what I'm going to do, I'm not sure about these -- this
2 group on the left, but I'm charging with Ms. Martin
3 and I don't know what plans you've made for this
4 weekend, I'm going to read this charge, you're going
5 to read this charge, you're going -- emerging as the
6 grammarian in the group, but your closing that's a
7 little unfair. That'll give them, the defense, an
8 advantage.

9 What about the last before I drop this
10 issue? Also Smith, Stevens and Quinn's acts need not
11 themselves be against the law. I guess to be
12 consistent we should say the defendants. All of you
13 are going to have to read this again. I'm not so sure
14 you've read it once. The comments I got at the end of
15 the day yesterday told me you had not. But I want you
16 to read it over the weekend. You'll hear me read it,
17 and I guess the last time to catch any issues is when
18 I read it, but I like the charge to really be error
19 free and for you to agree that it's error free.

20 Now, I hate to do this, do any of the
21 changes we just made on these pages impact what we did
22 with respect to aiding and abetting as charged in
23 Count II?

24 MS. MARTIN: I wonder, Your Honor, if
25 just using the defendant in that second count would

1 make sense, if there's a way to do the same thing as
2 Your Honor did with the beginning paragraphs. Page
3 46.

4 THE COURT: Yeah, I don't think I have
5 to keep you. We'll do that and we'll get the charge
6 out to you if not tonight then tomorrow.

7 MS. MARTIN: That second sentence of
8 the paragraph on page 46 reads the same. So you could
9 change that to the defendant and then change all of
10 the rest of the references to the defendant and they
11 would be consistent.

12 MS. MEEHAN: I think that's more
13 confusing, Your Honor, to the jurors but.

14 THE COURT: Why do you say that?

15 MS. MEEHAN: Because the Government's
16 theories of -- multiple theories of liability are very
17 confusing and I'll just leave it at that.

18 THE COURT: Well, that's one of the
19 things we agree on. Well, I think what we'll do,
20 maybe we ought to spend a few more minutes because the
21 two are inconsistent now. Right now, I think to be
22 consistent I'm in the second paragraph, "The
23 Government alleges that Smith, Stevens and Quinn aided
24 and abetted someone" and we changed it on page 29 to -
25 - instead of including each other, including a co-

1 defendant.

2 And the next sentence reads, "In order
3 to find --" and I think it makes sense, because we did
4 it before, a defendant guilty of using and carrying.
5 Yes, yes, yes.

6 Using or carrying a firearm during a
7 crime of violence because they aided and abetted
8 someone in committing the offense, you must find the
9 Government's proved -- first sentence is fine. The
10 second sentence reads -- no, I think it makes sense to
11 change it to a defendant, but I want to work through
12 it. I don't see where it would unduly prejudice. I'm
13 looking at what we just did with respect to Count I.

14 So beginning on page 46, it -- that --
15 the preceding sentence reads -- let me get to the
16 beginning of the sentence. "In order to find --" and
17 the paragraph -- page 29 reads, changing 46 to read, a
18 defendant guilty of using or carrying, and then it
19 goes on. First, that someone including one of the
20 defendants committed one of the offense charged.
21 Second -- now we changed the second element to read
22 that -- and I think it should read, we're talking
23 about in order to prove -- let me get to the beginning
24 of that.

25 In order to prove a defendant, so we're

1 talking about establishing reliability of any one of
2 the defendants. And we're changing -- we're moving
3 from the naming of the defendants to the defendant.
4 So the second element should read that the defendant
5 knew that the offense charged was going to be
6 committed by someone including a co-defendant.

7 I don't see how it will confuse things.
8 We're changing the charge to show the jury, to explain
9 to the jury how they must proceed with respect to
10 finding a defendant guilty of aiding and abetting.

11 And I think it works in any event. I
12 don't think I need keep you here. We'll change to a
13 defendant and if there's anything -- any tinkering
14 that needs to be done on Monday morning we'll do it.

15 We can spend a few minutes doing that
16 before the closings. So we'll have to come back to
17 the thing -- the only thing that we haven't finished
18 is the aiding and abetting charge for Count II. And
19 the only thing we're talking about changing is
20 deleting reference to the three defendants by name,
21 and talking about a defendant because the lead in to
22 that paragraph reads or a lead in to the elements
23 reads, in order to find a defendant guilty, you must -
24 - the Government must prove beyond a reasonable doubt.
25 And then we proceed.

1 Okay. And you still have an
2 opportunity to object on Monday. Any issues with
3 them? We've talked a lot about everything else.
4 We've prepared -- I don't know whether you have -- we
5 haven't updated them, but we'll give you copies now.
6 Give you copies, everyone gets copies of three verdict
7 sheets, Mr. Patterson, you get a fourth.

8 MS. MARTIN: Thanks.

9 MR. PATTERSON: Thank you.

10 (Pause)

11 THE COURT: Any issues with the verdict
12 form? They're identical, three forms for the three
13 defendants with respect to Counts I and II are
14 identical. There is a separate verdict form for
15 Stevens on Count III.

16 MS. MEEHAN: Your Honor, I have my
17 general objection that we discussed the other day,
18 I'll leave it at that.

19 THE COURT: You better refresh my
20 recollection.

21 MS. MEEHAN: Your Honor, that was if
22 they find Mr. Quinn not guilty on Count I --

23 THE COURT: Oh.

24 MS. MEEHAN: -- they don't move to
25 Count II, but Your Honor indicated that if that were

1 happen you might consider setting aside the verdict or
2 we would discuss it.

3 THE COURT: Oh, it hasn't been briefed
4 and it is an interesting issue. And if you press it,
5 it's easy to remedy. If you're right, we just vacate
6 the or set aside the conviction. If I don't submit it
7 to the Government and it should have been submitted to
8 the Government, no way to remedy.

9 MS. MEEHAN: Very well.

10 THE COURT: All right. But make that
11 objection again at the time of sentencing.

12 MS. MEEHAN: Very well.

13 THE COURT: Sentencing -- at the time
14 of the charge.

15 MS. MEEHAN: Thank you, Your Honor.

16 THE COURT: Mr. Patterson?

17 MR. PATTERSON: Nothing, Your Honor,
18 thank you.

19 MR. WITTELS: I agree with Ms. Meehan
20 and that I agree with Your Honor as to how to handle
21 it.

22 THE COURT: All right. Mr. Eckert?

23 MR. ECKERT: I'm fine, Your Honor.

24 THE COURT: Is there anything else that
25 we have to do?

1 MR. ECKERT: Not from the Government,
2 Your Honor.

3 MS. MEEHAN: Your Honor, are we
4 permitted to leave our items over the weekend in the
5 courtroom?

6 THE COURT: Yes. Michael will lock the
7 courtroom. Michael?

8 The answer is you can leave it here.

9 MS. MEEHAN: Thank you, Your Honor.

10 MR. ECKERT: Your Honor, may I raise
11 one, it doesn't have anything to do with -- it's
12 something of issue. I'm supposed to go on military
13 leave on Tuesday night and I would have Ms. Rasolphia
14 (ph), Chief of Violent Crime to be able to replace me
15 during deliberations if the Court would permit that.

16 MR. WITTELS: No objection.

17 MR. ECKERT: Ms. Martin will be here as
18 well, I'm sure more than capable of doing whatever it
19 is that I would be doing. But Mr. Rasolphia certainly
20 offered and directed me to inform the Court, if the
21 Court were to permit it he would be --

22 THE COURT: I certainly have no
23 objection, but I'm going to remind you as I was
24 reminded, I did this because jury deliberations in a
25 case involving -- I think it was violations of the

1 Arms Export Control Act to Iran, I wanted to leave and
2 we checked the -- while the jury was deliberated, and
3 we checked the rules. The rules require the judge who
4 substitutes be thoroughly familiar with the case. I
5 don't know that that's actually necessary in this
6 case, but I was shocked. I learned the rule as I was
7 citing myself on one of the Caribbean Islands where
8 I'd planed to be. As it turned out the jury did not
9 return a verdict in the five days I was away and they
10 did after I got back.

11 But telescopic, you might take a look
12 at the rule.

13 MR. ECKERT: I will, Your Honor. I
14 would just ask that he certainly supervise this case,
15 since from the claims filed against Mr. Quinn -- I
16 mean, not that he's familiar with it as we are, but he
17 is familiar with it, Your Honor, but I'll look up the
18 rule. I appreciate it.

19 THE COURT: Right. But it's not really
20 necessary. Ms. Martin has been here during the entire
21 trial and she's -- you know, she might assume or
22 ascend to the position of court grammarian if she's
23 found her way through this tortuous issue of
24 transforming a charge designed for a single defendant
25 involving inner play of defendants into one that makes

1 sense. And I think it's beginning to make a little
2 more sense to me. And I thank you for that.

3 Anything else we have to talk about
4 tonight?

5 MR. ECKERT: No, Your Honor, thank you.

6 MR. PATTERSON: No, Your Honor, thank
7 you.

8 MR. WITTELS: Judge, just by way of
9 it's a small world, I've been looking at Judge
10 Galotner's (ph) portrait, I know you clerked for him,
11 my father and Judge Galotner were on the Philadelphia
12 Record together, a newspaper and he actually married
13 my mother and father back in 1937.

14 THE COURT: Well, he became a good
15 friend. I knew his son Phil who's a Trinity brother
16 of mine. I did not know his other son very well, the
17 one that went on to be I think president of a college
18 or a law school, New England law school. But the
19 bottom line it was a good clerk-ship.

20 MR. WITTELS: He was a good man.

21 THE COURT: We were remarking about
22 offices in the old courthouse. My office was either
23 the smallest office in the judiciary or the largest
24 closet, it was terrible, absolutely terrible.

25 All right. On that note, I'm not going

1 to keep anyone. We're in recess until Monday morning
2 at 9:30. We'll start with closing statements. How
3 long do you expect to be by the way?

4 MS. MARTIN: I never want to under-
5 estimate, so I'm going to say an hour, but I think
6 realistically 45 minutes.

7 MR. PATTERSON: I think with the
8 justification charge, it could increase the time I'm
9 going to be required, probably 40, 35 minutes, 40
10 minutes.

11 MR. WITTELS: I doubt I'd go over a
12 half an hour, Judge, I don't make long closings.

13 MS. MEEHAN: 40 to 45 minutes, Your
14 Honor.

15 THE COURT: So we're talking about an
16 hour and a half, two, maybe close to three hours.
17 Hopefully we can finish before lunch. All right.
18 We're adjourned.

19 ALL: Thank you, Your Honor.

20 THE COURT: Have a good weekend.

21 THE CLERK: All rise.

22 (Proceedings recessed at 3:54 p.m., January 31st,
23 2020, to reconvene at 9:30 a.m., February 3, 2020.)

24 * * * * *

25

CERTIFICATION

I, Sheila G. Orms, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



SHEILA ORMS, APPROVED TRANSCRIPTIONIST

Dated: November 4, 2020

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